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Peer Review and the Promotion of Good Governance in Africa

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Peer Review and the Promotion of Good Governance in Africa

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Okezie Chukwumerije[†]

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I. Introduction

The economic and social crisis in Africa remains a source of concern for the world community. It is widely acknowledged that African countries have not been successful in creating viable economies to provide a decent standard of living for the people of the continent.¹ As a continent, Africa continues to lag behind

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¹ O.A.U. Thirty-Second Ordinary Session, *Yaounde Declaration (Africa: Preparing for the 21st Century)*, OAU Doc. AHG/Decl.3 (XXXII) (July 3-10, 1996), available at <http://www.africanreview.org/docs/govern/yaounde.pdf> (taking stock of the continent, the defunct Organization of African Unity (OAU) noted that “at the close of the 20th century, . . . of all the regions of the world, Africa is indeed the most backward in terms of development from whatever angle it is viewed and the most vulnerable as far as peace, security and stability are concerned[.]”).

others in both economic and social indices of human progress. Although a handful of African countries have achieved decent rates of economic growth,² the continent as a whole has retrogressed in recent decades.³ Despite a substantial endowment of natural and human resources and significant amounts of foreign aid,⁴ African countries perennially under perform the rest of the world in economic affairs.⁵ Africa's people have been plagued by disease and poverty. These problems have been exacerbated by civil and political conflicts in large swaths of the continent.⁶ These conflicts impede long-term financial planning and complicate efforts to attract foreign investments and capital into the continent.⁷

² See John Ruggie, *Breaking the Loving Embrace: African Solutions for African Problems*, in HARNESSING THE POWER OF PARTNERSHIP 4 (World Economic Forum, 2003) (on file with the North Carolina Journal of International Law and Commercial Regulation).

³ Kempe Hope, *Toward Good Governance and Sustainable Development: The African Peer Review Mechanism*, 18 GOVERNANCE: INT'L J. POL'Y, ADMIN. & INST. 283, 284 (2005). For example, per capita income in Africa has been on a downward trend. *Id.* Per capita income in the continent at the beginning of this century was ten percent below the level of income in 1980. *Id.*

⁴ ECONOMIC COMMISSION FOR AFRICA, ECONOMIC REPORT ON AFRICA 2002: TRACKING PERFORMANCE AND PROGRESS 28 (2002), available at <http://www.uneca.org/era2002>. Africa has been a major recipient of "gross official development assistance—whether in terms of grants or concessional loans—from multilateral and bilateral sources." *Id.* The Organization for Economic Cooperation and Development (OECD) through its Development Assistance Committee (DAC) has provided the largest portion of aid to African countries. *Id.* In the aforementioned report, the commission stipulated systematic benchmarking of economic performance of African countries as one of the means of promoting effective economic policies in the continent. *Id.*

⁵ See *id.*

⁶ See WORLD BANK, CAN AFRICA CLAIM THE 21ST CENTURY 59 (2000). Some of these conflicts have assumed genocidal proportions. *Id.* For example, the genocide in Rwanda devastated the country and laid waste to the economy of the region. *Id.* The economic costs of these conflicts have been considerable. *Id.* It is estimated that about \$1 billion a year in Central Africa and \$800 million in West Africa are diverted from development uses to finance conflicts. *Id.*

⁷ See ECONOMIC COMMISSION FOR AFRICA, ECONOMIC REPORT ON AFRICA 2005: CHALLENGES OF UNEMPLOYMENT AND POVERTY IN AFRICA 34-39 (2005), available at <http://www.uneca.org/era2005>. The picture here is painted in broad strokes to highlight the common problems facing the continent. See *id.* It should, however, be recognized that while some patterns and features recur, there is also diversity in the range of experience and rate of progress. For example, some African countries have lately

On the bright side, Africa has enjoyed a renaissance of sorts recently, with a new breed of leaders⁸ demonstrating renewed commitment to using fresh and innovative ideas in addressing the problems of the continent.⁹ Some of these leaders have been successful in introducing economic reforms,¹⁰ improving the domestic political climate,¹¹ and building the foundation for sustainable growth in their countries.¹² The emergence of more democratic regimes in Africa in the 1990s has increased the opportunity for civic action and has provided an avenue for Africans to hold their governments accountable for the implementation of more effective government policies.

There has been no shortage of theories that seek to explain the economic underdevelopment of Africa. Some commentators have placed a significant portion of the blame on the colonization of the continent.¹³ Others have placed the blame on ineffective economic

recorded more economic success than others. *See id.* The ECA has attributed these successes, in part, to good macroeconomic management and improved political climate. *See id.* As will become obvious in the discussion below, one of the benefits of country peer reviews is that they help highlight cases of success so that other countries can learn from the experience.

⁸ Robert Rotberg, *Strengthening African Leadership*, FOREIGN AFFAIRS, July-Aug. 2004, at 14 (discussing the emergence of effective African leadership in recent decades).

⁹ It has been said that introduction of the African Union (AU) is a culmination of a new consciousness that Africa has to shake off its history of lack of accountability, subjugation, and oppression so as to realize its full potentials. *See infra* note 29; Vincent Nmeihelle, *The African Union and African Renaissance: A New Era for Human Rights Protection in Africa?* 7 SING. J. INT'L & COMP. L. 412, 416 (2003).

¹⁰ *See* Omar Kabbaj, *Foreword to A PARTNERSHIP FOR AFRICAN DEVELOPMENT: ISSUES AND PARAMETERS* 5 (Henock Kifle, Adebayo Olukoshi & Lennart Wohlgemuth, eds., 1997) (stating that Omar Kabbaj, the former president of the African Development Bank, has noted that because of economic reforms introduced in parts of the continent, "African now seems to be on the verge of achieving sustained rates of economic growth that exceed population growth rates.").

¹¹ *See id.* at 11 (noting that the "impressive stride[] that has been made towards political liberalization and democracy by over thirty countries in the region in the last decade is indeed a cause for optimism about the future").

¹² *See* Kwesi Botchwey, *Overcoming Collective Contagion through Sound Economic Governance*, in *HARNESSING THE POWER OF PARTNERSHIP*, *supra* note 2, at 12.

¹³ *See generally, e.g.*, Graziella Bertocchi & Fabio Canova, *Did Colonization Matter for Growth? An Empirical Exploration into the Historical Causes of Africa's Underdevelopment*, 46 EUR. ECON. REV. 1851 (2002) (arguing that colonization had a negative effect on economic growth in Africa).

and social policies, cultural factors,¹⁴ ineffective institutions, the structure of the world economy,¹⁵ and large-scale corruption in the continent.¹⁶ Each of these theories may explain what is responsible for the conditions in Africa.¹⁷ When States fail their citizens, it is rarely attributable to one factor, but more frequently due to a confluence of factors. Nonetheless, despite the varying explanations for the struggling economic situation in Africa, there is broad agreement that tackling the problem of poor governance in the continent is central to promoting its economic and social development.¹⁸

International concern about the seemingly intractable problems facing the continent has led to the development of strategies for stimulating sustainable economic and social development of Africa.¹⁹ Some of these efforts originated outside of the continent.

¹⁴ See *Africa: The Heart of the Matter*, THE ECONOMIST, May 13, 2000, at 17. (stating that although "brutality, despotism and corruption exist everywhere," for "reasons buried in their culture" African societies are especially susceptible to them."); see also WORLD BANK, WORLD BANK DEVELOPMENT REPORT 1997: THE STATE IN A CHANGING WORLD 162 (1997) (suggesting that the "continuing struggle between traditional forms of governance and social organization (often based on tribes, lineages, and language and kinship groups) and modern forms of government" was a major cause of state failure in Africa).

¹⁵ See Fantu Cheru, *Structural Adjustment, Primary Resource Trade and Sustainable Development in Sub-Saharan Africa*, 20 WORLD DEV. 497, 498 (1992).

¹⁶ See *The New Partnership for Africa's Development (NEPAD)* [Oct. 2001] ¶ 18, available at www.nepad.org/2005/files/documents/inbrief.pdf [hereinafter *New Partnership*]. According to NEPAD, the factors accentuating economic underdevelopment in the continent include the legacies of colonialism, the inadequacies of social and economic policies pursued by African countries, and the operation of the international economic system. See *id.*

¹⁷ See *id.* ¶ 22. (noting that "[p]ostcolonial Africa inherited weak states and dysfunctional economies, which were further aggravated by poor leadership, corruption and bad governance in many countries").

¹⁸ See ECONOMIC COMMISSION FOR AFRICA, GOVERNANCE FOR A PROGRESSING AFRICA: FOURTH AFRICAN DEVELOPMENT FORUM 3 (2005). The Executive Secretary of the Economic Commission of Africa has acknowledged that "no matter what sectoral problem or national challenge we face, over and over again, governance turns out to be pivotal." *Id.*; see ANDREW CLAYTON, GOVERNANCE, DEMOCRACY & CONDITIONALITY: WHAT ROLE FOR NGOS 36 (1994) (noting that a "crisis of governance" accounted in large part for the continent's poor economic performance).

¹⁹ See, e.g., Yilmaz Akyuz & Charles Gore, *African Economic Development in a Comparative Perspective* 25 CAMBRIDGE J. ECON. 265 (2001) (arguing for an approach that draws on both the post-colonial and adjustment periods of the history of the

The World Bank, the International Monetary Fund (IMF), and other international organizations have been active in conducting studies, recommending policies, and providing financial assistance to strengthen African economies and to promote good governance on the continent.²⁰ Through the provision of aid, technical assistance, and economic cooperation, non-African countries have also assisted in the search for effective responses to the lack of stimulating development in Africa.²¹

This paper focuses on the African Peer Review Mechanism (APRM), a peer monitoring project designed to promote good governance and development in Africa.²² The introduction of the APRM reflects a recognition by African governments that self-monitoring and review will encourage African countries to improve their standards of governance and provide a mechanism for both the people of the continent and outsiders to benchmark the performance of African countries.²³ Peer review and mentoring will also enable stakeholders to hold African governments accountable for implementing sound policies to redress problems uncovered during the review process.²⁴

continent).

²⁰ See Howard Stein, *Globalisation, Adjustment and the Structural Transformation of African Economies?: The Role of International Financial Institutions* (Ctr. for the Study of Globalisation and Regionalisation, Working Paper No. 32/99, May 1999), abstract available at <http://ssrn.com/abstract=165812>.

Concerns have been expressed about the effectiveness of some of the economic development strategies advocated by international institutions. Particularly contentious were the structural adjustment policies advocated by the IMF in the 1980s. See ROBERT BIEL, *THE NEW IMPERIALISM: CRISIS AND CONDITIONS IN NORTH/SOUTH RELATIONS* 231 (2000) (arguing that the structural adjust policies of the IMF were not designed to assist developing countries but to integrate them into the capitalist system).

²¹ Although there has been understandable criticism of the level of international concern about the AIDS epidemic and civil wars on the continent, international initiatives have actually been somewhat successful in keeping a focus on Africa's problems. See A. Ali, C. Malwanda & Y. Suliman, *Official Development Assistance to Africa*, 8 J. AFR. ECON. 504 (1999).

²² NEPAD, *African Peer Review Mechanism*, ¶ 2, AHG/235(XXXVIII) Annex 2, <http://nepad.org/2005/files/documents/49.pdf> [hereinafter *Peer Review*].

²³ Hope, *supra* note 3, at 291.

²⁴ See Chris Stals, Member APRM Panel of Eminent Persons, Address at the opening ceremony of the National Stakeholders Forum for the African Peer Review Mechanism (May 27, 2004), available at <http://www.sarpn.org.za/documents/d0000827/index.php> (stating that as part of the review process, the reviewed country is required to

It is widely recognized that “sound economic and corporate governance, political governance, peace and security are necessary preconditions for Africa’s development.”²⁵ By peer monitoring, African states intend to foster the adoption of practices, standards, and policies that will promote good governance, sustainable development, economic growth, and political stability in the continent.²⁶ The expectation is that peer monitoring will contribute to the evolution of capable States, which provide security, create a political and legal climate which fosters economic growth, promote equitable distribution of wealth, and tackle the problem of corruption.²⁷

This paper examines how the APRM can promote good governance in African countries. Part II examines the history of the APRM and its goals and objectives. Part III examines the types and stages of reviews. Part IV evaluates the benchmarks used for measuring the performance of the reviewed countries. Finally, Part V analyzes the obstacles to the realization of the goals of the review mechanism and suggests strategies for ensuring that the review mechanism will achieve its laudable objective of promoting good governance and sound government policies in Africa.

II. Context, Goals, and Objectives of the APRM

Important to an understanding of the philosophy behind the APRM is an appreciation of the continent’s history of adversity. The APRM was developed as a result of the failures of prior strategies for solving the continent’s problems, the renewed commitment of African leaders to finding local solutions to these

formulate “a Programme of Action with time-bound objectives to guide all stakeholders in the actions required by all–government, private sector, civil society–to achieve the common development vision”).

²⁵ ECONOMIC COMMISSION FOR AFRICA, *supra* note 18, at 1-2. For a further discussion of good governance policies and their effect upon African development, see James Gathii, *Retelling Good Governance Narratives about Africa’s Economic and Political Predicaments: Continuities and Discontinuities in Legal Outcomes between Markets and States*, 45 VILL. L. REV. 971 (2000).

²⁶ See *Peer Review*, *supra* note 22, ¶ 3.

²⁷ ECONOMIC COMMISSION FOR AFRICA, *supra* note 18, at 1-2 (noting that “the capable state is the foundational prerequisite for a rejuvenated development effort on the continent.”).

problems, the increasing awareness of the importance of good governance in economic and social progress, and the desire to construct a framework for monitoring the commitment of African countries to principles, policies and practices conducive to promoting the socio-economic development of the continent.²⁸ It is only against the background of the continent's history of battling socio-economic malaise that the role, prospects, and challenges of the APRM can be best understood.

African governments have long recognized the need for collaboration in formulating and implementing economic and social development policies.²⁹ In conjunction with the United Nations, African countries have adopted a variety of initiatives with these purposes. These initiatives include the Lagos Plan of Action for the Economic Development of Africa,³⁰ the African Priority Program for Economic Recovery (which transformed into the United Nations Program of Action for Africa's Economic Recovery and Development), the African Alternative Framework to Structural Adjustment Programmes for Socio-Economic Recovery and Transformation,³¹ the African Charter for Popular Participation for Development,³² and the United Nations New

²⁸ See Kempe, *supra* note 3, at 284-89.

²⁹ See generally Craig Jackson, *Constitutional Structure and Governance Strategies for Economic Integration in Africa and Europe*, 13 TRANSNAT'L. L. & CONTEMP. PROBS. 139 (2003) (evaluating economic integration initiatives in Africa).

³⁰ See ORGANIZATION OF AFRICAN UNITY, LAGOS PLAN OF ACTION FOR THE ECONOMIC DEVELOPMENT OF AFRICA 1980-2000, available at http://www.uneca.org/itca/ariportal/docs/lagos_plan.PDF. The plan had objectives of promoting high and sustained economic growth, transforming Africa's economic and social structures, and maintaining a sustainable resource base for the continent. See *id.* It also advocated regional integration as a means of restructuring the fragmented continent into more viable economic entities. See *id.*

³¹ See ECONOMIC COMMISSION FOR AFRICA, AFRICAN ALTERNATIVE FRAMEWORK TO STRUCTURAL ADJUSTMENT PROGRAMMES FOR SOCIO-ECONOMIC RECOVERY AND TRANSFORMATION, available at http://www.uneca.org/publications/ESPD/old/aaf_sap.pdf (responding to the IMF's structural adjustment policies imposed on several African countries, by advocating an alternative path that stressed self-reliance, human development, and economic transformation).

³² See International Conference on Popular Participation in the Recovery and Development Process in Africa, Arusha, United Republic of Tanzania, Feb. 12-16, 1990, *African Charter for Popular Participation in Development and Transformation*, available at http://www.uneca.org/publications/DMD/enhancing_african_csos/annex1.doc. (charter was the product of an The International Conference on Popular

Agenda for Development of Africa.³³ These initiatives, some of which were little more than declarations, have received mixed reviews.³⁴ The principles and policies they articulated were often laudable, but the most severe problems arose in their implementation. To improve the quality of governance and the quality of living in the continent, these principles and policies had to rise above the fine print of well-articulated declarations to influence the actual conduct and operations of governments. The principles and policies rarely rose to this level. Feeble commitment and inadequate implementation largely explain the failure to improve economic development in the continent.³⁵ While these plans have not proven successful in resolving the underlying economic and social problems of the continent, they nonetheless expressed widespread dissatisfaction with the status quo and embodied a recognition of the need for change in approaches to addressing the challenges facing the continent. The plans also provided an opportunity for African countries and civil society in the continent to discuss solutions to the problems.

A more recent African economic and social initiative is the New Partnership for Africa's Development (NEPAD), an economic development program of the African Union (AU).³⁶ The

Participation in the Recovery and Development Process in Africa, a collaborative effort between African governments, African civil society organizations and United Nations agencies.).

³³ See Annex II to G.A. Res. 46/151, ¶ 6, U.N. Doc. A/RES/46/151 (Dec. 18, 1991), available at <http://www.un.org/documents/ga/res/46/a46r151.htm> (agenda, adopted by the UN General Assembly in 1991, represented a compact between African countries and the international community to transform African economies, reduce their vulnerabilities to external shocks, integrate them into the global economy, and enhance their self reliance.).

³⁴ See *New Partnership*, *supra* note 16, ¶ 42.

³⁵ HOWARD WHITE & TONY KILICK, *AFRICAN POVERTY AT THE MILLENNIUM: CAUSES, COMPLEXITIES, AND CHALLENGES* 45 (2001).

³⁶ See Assembly of the African Union, Second Ordinary Session, *Preamble to the Declaration on the Implementation of the New Partnership for Africa's Development*, AU Doc. Assembly/AU/Decl.8(II), (July 10-12, 2003), available at <http://www.africa-union.org/root/au/Documents/Decisions/hog/12HoGAssembly2003.pdf>. The African Union was set up by the Constitutive Act of the African Union [AU Act], adopted on July 11, 2000, in Lome Togo by the OAU. CAB/LEG/23.15, 8 AFR. Y.B. INT'L L. 479 (2000). The AU is charged with the mission of addressing the problems facing the continent "in the light of the social, economic and political changes taking place in the world." *Id.* For an evaluation of the institutional framework of the AU, see Nsongurua

partnership, which was launched by African leaders in Abuja, Nigeria, in October 2001, is aimed at providing a fresh framework for African interaction with the world that is premised on African countries setting their own agenda for development.³⁷ The partnership evolved from two overlapping economic initiatives for the revitalization of Africa. The first was the Millennium Partnership for the African Recovery Programme (MAP) devised by Presidents Mbeki of South Africa, Obasanjo of Nigeria, and Bouteflika of Algeria on a mandate by the Organization for African Unity (OAU).³⁸ MAP embodied a commitment by African leaders to a shared vision “to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development, and to participate actively in the world economy and body politic.”³⁹

The second was the Omega Plan for Africa put forward by President Wade of Senegal.⁴⁰ The Omega Plan was an attempt to

Udombana, *Can the Leopard Change Its Spots? The African Union Treaty and Human Rights*, 17 AM. U. INT’L REV. 1177 (2002). The AU replaced the Organization of African Unity (OAU). See The Durban Declaration in Tribute to the Organization for African Unity and on the Launching of the African Union, Durban, South Africa, July 10-12, 2002. AU Doc. ASS/AU/Decl. 2(1).

³⁷ *New Partnership*, *supra* note 16, ¶ 48. Some of the previous economic development initiatives in Africa have been condemned as impositions from abroad which were designed without proper regard to the peculiar problems of the continent. See, e.g., Anthony Baah, *History of African Development Initiatives*, paper presented at workshop of the African Labor Research Network, Johannesburg, May 2003, available at www.sarpn.org.za/documents/d0000407/index.php (arguing that African countries have been fertile grounds for experimentation of foreign economic initiatives, in particular the World Bank/ IMF structural adjustment programs of the 1980s).

³⁸ In its 1999 summit, the OAU gave the presidents a mandate to engage the industrialized world with an aim of developing a constructive partnership for the regeneration of the continent. See OAU, Algiers Declaration, July 12-14, 1999, AHG/Decl. 1 (XXXV), available at http://www.au2002.gov.za/docs/summit_council/algiers.htm.

³⁹ NEPAD, THE MILLENNIUM PARTNERSHIP FOR AFRICAN RECOVERY PROGRAMME ¶ 1 (Mar. 2001), available at <http://www.nepad.org.ng/PDF/About%20Nepad/map3A.pdf>. The key priorities of MAP were to promote peace, security and governance, to invest in Africa’s people, to diversify Africa’s production and exports, and to invest in infrastructural development in the continent. *Id.* MAP recognized the importance of mobilizing existing human and material resources, and using them in bold and imaginative ways to eradicate poverty and to uplift the people of the continent. *Id.*

⁴⁰ See Dani Nabudere, *NEPAD: Historical Background and Prospects*, 8, paper presented at the World Summit on Sustainable Development, Johannesburg, Aug. 2002,

draw from the lessons of failed economic experiments in the continent and to formulate renewed “economic policies that would eradicate poverty and improve the well-being of the people” of Africa.⁴¹ Focusing mainly on infrastructural development, the plan called for a framework of regional policies for addressing the economic problems of the continent.⁴² It also contained strategies for conducting needs assessments, organizing financing, and engineering action in the priority areas of basic infrastructure, education, health, and agriculture.⁴³

Due to concerns about a possible conflict of the goals of both projects, the 2001 OAU summit approved the merger of MAP and the Omega Plan to form the New African Initiative (NAI),⁴⁴ an initiative which later transformed into NEPAD.⁴⁵ NEPAD was conceived as “Africa’s principal agenda for economic development, providing a holistic, comprehensive integrated strategic framework for the socio-economic development of the continent, within the institutional framework of the African Union.”⁴⁶

The creation of NEPAD was greeted with enthusiasm and support both inside and outside the continent.⁴⁷ However,

available at <http://www.worldsummit2002.org/texts/DaniWNabudere.pdf>.

⁴¹ NEPAD, THE OMEGA PLAN FOR AFRICA ¶ 19, May 2001, available at <http://www.sarpn.org.za/NEPAD/Omega.pdf> [hereinafter OMEGA REPORT].

⁴² *Id.* at ¶ 23. Regional organizations in Africa, such as the East African Community (EAC), the Southern African Development Community (SADC), and the Economic Community of West African States (ECOWAS), have attempted to strengthen sub-regional economic integration and promote good governance in Africa. For a discussion of regional integration in Africa, see African Development Bank, REGIONAL INTEGRATION IN AFRICA (2002).

⁴³ OMEGA REPORT, *supra* note 41, ¶ 27.

⁴⁴ See NEPAD, A NEW AFRICAN INITIATIVE: MERGER OF THE MILLENNIUM PARTNERSHIP FOR THE AFRICAN RECOVERY PROGRAMME (MAP) AND OMEGA PLAN (2001), available at <http://www.nepad.org.ng/PDF/About%20Nepad/NAI.pdf>.

⁴⁵ Nabudere, *supra* note 40, at 8.

⁴⁶ Department of Foreign Affairs, South Africa, *Background on the New Partnership for Africa’s Development*, May 2002, <http://www.au2002.gov.za/docs/background/nepad.htm>.

⁴⁷ See, e.g., statement of Prime Minister of Canada Jean Chretien to the Commonwealth Business Forum, Abuja, Nigeria, Dec. 4, 2003, available at http://www.pco-bcp.gc.ca/default.asp?Language=E&Page=archivechretien&Sub=Speeches&Doc=commonwealthbusinessforum.20031204_e.htm (lauding the creation of

concerns were also expressed about the degree of external influence in its creation,⁴⁸ the lack of a “social anchor” to its economic governance regime,⁴⁹ and the good faith of its foreign partners.⁵⁰ To viewers, NEPAD represents a fresh effort to address the myriad problems facing the continent.⁵¹ NEPAD is attractive, in part, because its primary documents reject the traditional model of excessive reliance on foreign assistance and

NEPAD and pledging the cooperation of the Canadian government to the initiative).

⁴⁸ See United Nations Declaration on the New Partnership for Africa's Development, G.A. Res. 57/2, ¶ 6, U.N. GAOR, 57th Sess., U.N. Doc. A/Res/57/2 (Sept. 16, 2002). In supporting the implementation of NEPAD, the UN urged the international community and donor countries to assist in the implementation of the NEPAD agenda. See *id.* Some commentators, however, expressed concern about the role of the foreign partners in NEPAD. Professor S.K.B. Asante called it a “partnership of unequal partners.” S.K.B. Asante, *A Partnership of Unequal Partners*, NEW AFRICAN, June 2003, at 14; see also Victor Mosoti, *The New Partnership for Africa's Development: Institutional and Legal Challenges of Investment Promotion*, 5 SAN DIEGO INT'L L.J. 145, 150 (2004) (suggesting that NEPAD is tainted by excessive external dependence like most African development models).

⁴⁹ See Adebayo Olukoshi, *Governing the African Developmental Process: The Challenge of the New Partnership for Africa's Development (NEPAD)*, at 7 (Center of African Studies, University of Copenhagen, Occasional Paper), available at http://www.teol.ku.dk/cas/nyhomepage/mapper/Occasional%20Papers/Occ_Olukoshi.doc ([NEPAD lacks a] “social anchor that can ensure that the democracy and governance proposals that are made are moved from the realm of the *pro forma* and technocratic/managerial to the arena of the political.”).

⁵⁰ See Letter from Jubilee Debt Campaign to Prime Minister Tony Blair, (Dec. 6, 2005), available at <http://www.wdm.org.uk/campaigns/debt/nigeria/jointlettertoblair.doc>. The good faith of the international community in addressing the continent has been called into question by recent developments in the Africa debt relief project. In 2005, Nigeria entered into an agreement with Western debtors on the cancellation of some of its foreign debt. Under the agreement, Nigeria is required to pay \$12.4 billion. *Id.* There has been widespread criticism of the agreement. For example, the £1.7 billion that Nigeria will pay the UK government under the agreement is twice what the UK government gave in aid to the whole of Africa in 2005 and is “more than the UK will contribute to the G8 debt cancellation deal for 18 other poor countries over the next 30 years.” *Id.*; see Letter from Archbishop Desmond Tutu to the British Chancellor of the Exchequer, Gordon Brown (Jan. 27, 2006), available at <http://www.wdm.org.uk/campaigns/debt/tutuletter.pdf> (accusing the Western debtors of “a meanness of spirit” which stands in opposition to the sentiments they have expressed in support of economic development in the continent).

⁵¹ Olukoshi, *supra* note 49, at 16. Although some have indicated a close relationship between aspects of the NEPAD plan of action and the IMF/World Bank neo-liberal agenda of the 1980s, NEPAD represents a more integrated strategy that builds on intra-African solutions and partnerships with the international community. *Id.*

loans as stimulus for economic progress in Africa.⁵² Instead, NEPAD focuses primarily on building partnerships for progress, first within Africa, and then between Africa and the rest of the world.⁵³ These partnerships are to be founded on a new paradigm of self-reliance, self-discipline, and constructive engagement with the rest of the world.⁵⁴ Nevertheless, NEPAD is distinguished by its emphasis on local solutions to the problems of the continent, its commitment to market policies,⁵⁵ its promise to foster good governance, and its emphasis of African responsibility and leadership in the march toward the continent's development.⁵⁶

Although NEPAD places primacy on local solutions to African problems, it also recognizes that local initiatives have to be complemented by assistance from the industrialized world in terms of market access, foreign direct investments, and debt relief.⁵⁷ By offering to hold African leaders accountable for the implementation of pro-growth policies and the running of

⁵² According to NEPAD's New Partnership, it is the responsibility of African leaders to articulate regional priorities and development plans, and spearhead their implementation. See *New Partnership*, *supra* note 16, ¶¶ 47, 49.

⁵³ *Id.* ¶¶ 7, 8.

⁵⁴ See Communiqué by President Obasanjo Issued at the End of the Third Meeting of the African Peer Review Mechanism Panel of Eminent Persons, Nov. 2003, at 14-15, <http://www.nepad.org>. According to President Obasanjo of Nigeria, NEPAD provides a "common African platform from which to engage the rest of the international community in a dynamic partnership that holds real prospects for creating a better life for all [Africans]." *Id.*

⁵⁵ For a critique of the role of market policies in NEPAD, see James Gathii, *A Critical Appraisal of the NEPAD Agenda in Light of Africa's Place in the World Trade Regime in an Era of Market Centered Development*, 13 *TRANSNAT'L L. & CONTEMP. PROBS.* 179, 187-92 (2003).

⁵⁶ See *New Partnership*, *supra* note 16, ¶ 48 (arguing that the partnership represents a new method of interaction with the international community "based on the agenda set by African peoples through their own initiatives and of their own volition, to shape their own destiny").

⁵⁷ See Adebayo Adedeji, *NEPAD: A View from the African Trenches in*, NEPAD: AFRICAN INITIATIVE, NEW PARTNERSHIP? 20 (2002), available at http://www.ipacademy.org/PDF_Reports/NEPAD.pdf. Some commentators have cautioned against excessive emphasis on foreign assistance. Professor Adebayo Adedeji, the former Executive Director of the Economic Commission for Africa, has suggested that a strategy of eliminating the waste of domestic resources, reduction of capital leakages, debt relief, and reform of the commodity trade would be more successful than reliance on the injection of foreign capital. See *id.*

functional, democratic public institutions, NEPAD's proponents anticipate that foreign partners will regain confidence in the investment climate in the continent and provide the necessary complementary support.⁵⁸

Some have expressed the understandable concern that by being partially built on the expectation of support, NEPAD may afford international economic organizations and industrialized countries a channel for exerting direct pressure and influence on the operation of African governments.⁵⁹ This concern is motivated by disillusionment with the economic policies prescribed by the World Bank, the IMF, and western governments.⁶⁰ Also, there is a suspicion that any partnership with international economic institutions may present a renewed opportunity for external pressure to be reintroduced into the continent.⁶¹ However, this concern is mitigated by the fact that NEPAD's plan of action and its core commitments were drafted, and can be amended, by African countries.⁶² Far from comprising a set of policies and practices imposed from the outside by international institutions and foreign governments, NEPAD's project embodies a recommitment by African leaders to a set of principles, policies, and practices that are conventionally viewed as foundations for the

⁵⁸ Gathii, *supra* note 55, at 187. Some view this expectation of foreign cooperation and support as inimical to the interests of the continent. James Gathii has lamented that "NEPAD is less a pledge to govern with the best set of policies that might make a real difference for Africa's economic and political future than it is a plan to open the flow of donor funds and credit." *Id.*

⁵⁹ See Press Release, NEPAD News, Recent Developments in the APRM in Kenya and the Continental Process (July 30, 2005), available at <http://www.nepad.org/2005/news/wmprint.php?ArtID=37>. Responding to the concern that foreign donors may condition foreign assistance on participation in the APRM process, the Executive Director of the APRM, Bernard Kouassi, noted that although "some donors and development partners could use the results of the APRM assessment or reviews to make decisions on aid and development assistance, [] this is not the primary purpose of the APRM or its intention." *Id.* Kouassi further noted that APRM is a peer learning and experience-sharing process. *Id.*

⁶⁰ See Stein, *supra* note 20. An example is the structural adjustment program advocated by the International Monetary Fund (IMF) in the 1980s. *Id.*

⁶¹ Len Verwey, *Nepad and Civil Society Participation in the APRM*, (IDASA, occasional paper), at 11-12, available at <http://www.un-ngls.org/cso/cso8/nepad.pdf>.

⁶² See generally *New Partnership*, *supra* note 16.

creation of self-sustaining and vibrant economies.⁶³ Moreover, the legitimate concerns about the adverse effects of the structural adjustment policies of the 1980s do not justify an inherent suspicion of market-based solutions to the problems of the continent.⁶⁴ To be sure, the force-fed “shock therapy”⁶⁵ of the 1980s had deleterious effects on the economies of African countries and created social problems in some of these countries.⁶⁶

It is now generally accepted that the “shock therapy” of the structural adjustment program—with its advocacy of the elimination of price controls, the reduction of government spending, the removal of government subsidies, and the dismantling of trade barriers—did not achieve its declared objective of stimulating the economies of African countries.⁶⁷ The lesson to be learned from the failure of these economic improvement policies is not that some of these policies are inherently ineffective, but that economic policies should be carefully tailored to suit the needs of particular countries, bearing in mind their history, political structure,⁶⁸ and public institutions.⁶⁹

⁶³ *Id.* ¶ 79.

⁶⁴ See generally *New Partnership*, *supra* note 16. It should be reiterated that NEPAD is more than a collection of market-based solutions to the problems of Africa. As the core principles make clear, it emphasizes a coordinated strategy of the application of market-based principles, respect for property rights and the rule of law, enforcement of democratic principles, and the creation of effective public institutions. *Id.*

⁶⁵ See John Marangos, *The Political Economy of Shock Therapy* 16 J. ECON. SURVS. 41(2002).

⁶⁶ Adebayo Adedeji, *An Alternative for Africa*, in ECONOMIC REFORM AND DEMOCRACY 126 (Larry Diamond & Marc Plattner eds., 1995) (“Far from bringing about economic reform, these SAPs [structural adjustment policies] have severely eroded the developmental drive that has always been the best hope for stabilizing the precarious political structures that succeeded colonialism.”).

⁶⁷ But see World Bank, *ADJUSTMENT IN AFRICA REFORMS, RESULTS, AND THE ROAD AHEAD* 219 (1994) (arguing that the policies were useful in laying a foundation for economic recovery).

⁶⁸ See David Dollar & Jacob Svensson, *What Explains the Success or Failure of Structural Adjustment Programs?* (World Bank, Policy Research Working Paper No. 1938, 1998), available at <http://www.worldbank.org/html/dec/Publications/Workpapers/WPS1900series/wps1938/wps1938.pdf> (arguing that the World Bank has accepted the importance of democratic institutions in the success of economic reforms).

⁶⁹ See, e.g., James Surowiecki, *Morales's Mistake*, THE NEW YORKER, Jan. 23-30, 2006, at 38 (arguing that the mistake of neo-liberalism was to assume that “good government policies alone were what mattered”). Neo-liberal economics is partly

Moreover, there has to be a local impetus for genuine reform.⁷⁰ It must be remembered that NEPAD is an African initiative and that its policies and practices, articulated by African countries, will be informed by an appreciation of the peculiar social and cultural environment of the continent.

NEPAD focuses on five broad policy areas: democracy, governance, and peace and security; economic and corporate governance; infrastructure and information technology; human resource development; and agriculture and market access.⁷¹ Of particular relevance to this paper is the commitment to good governance. Pursuant to this commitment, members are obligated to implement processes, policies and practices that accord with democratic values, the rule of law, transparency, accountability, integrity, respect for human rights, and promote socio-economic development.

Encouraging good governance is one of the most commendable features of NEPAD. By emphasizing governance, African leaders acknowledge that they need to take primary responsibility for promoting principles and policies conducive to the creation of viable and effective government institutions responsive to the needs of their people.

Good governance has been described as a condition in which the responsibilities of government are “discharged in an effective, transparent, and accountable manner.”⁷² This implies the maintenance of efficient and accountable institutions, entrenchment of pro-development principles, protection of human

concerned with the minimization of state intervention in the market and the integration of national economies into the international market economy. The structural adjustment policies were designed to achieve these twin objectives. *Id.*

⁷⁰ See Yvonne Tsikata, *Owning Economic Reforms* (World Inst. for Dev. Econ. Research, United Nations University, Discussion Paper No. 2001/53, 2001), available at <http://www.wider.unu.edu/publications/dps/dp2001-53.pdf> (discussing the role of local ownership to the success of economic reforms).

⁷¹ See Guimisai Mutume, *New Barriers Hinder African Trade*, 19 AFRICA RENEWAL 19 (Jan. 2006) available at <http://www.un.org/ecosocdev/geninfo/afrec/vol19no4/194trade.html> (noting that African countries continue to face regulatory barriers to their agricultural exports).

⁷² See Kempe Ronald Hope Sr., Director, Dev. Mgmt. Div., UN Econ. Comm’n for Africa, Paper Presented at the Harvard Int’l Dev. Conference: The UNECA and Good Governance in Africa, (Apr. 4-5, 2003), at 2, available at http://www.uneca.org/eca_programmes/development_policy_management/Hope_Harvard.doc.

rights, respect of the rule of law, and the provision of a mechanism for popular participation in governance and decision-making.⁷³ Good governance requires the creation of functional governments, an atmosphere that fosters civic participation, and an environment that promotes public accountability of government officials.⁷⁴ It also entails the exercise of public authority for the common good.⁷⁵

There is an increasing awareness that good governance is central to the building of socially and economically successful nations.⁷⁶ Studies have shown a positive correlation between good governance and economic progress, demonstrated by increased levels of income, social welfare, and investment.⁷⁷ There is also a strong correlation between good governance and economic competitiveness,⁷⁸ the latter being a collection of policies and factors that influence the level of productivity and that thereby determine the level of economic prosperity.⁷⁹ Studies have also demonstrated that the rule of law and the protection of property rights⁸⁰ are central to the development of strong market economies that generate the wealth necessary for lifting people out of poverty.⁸¹

⁷³ *Id.* at 2-3.

⁷⁴ *Id.*

⁷⁵ See Daniel Kaufmann, *Myths and Realities of Governance and Corruption*, in THE GLOBAL COMPETITIVENESS REPORT 2005-2006 81-95 (2005). Kaufmann notes that governance has a political dimension ("the process by which [officials] are selected, monitored, and replaced"), an economic dimension (government capacity for effective economic management and implementation of sound policies), and an institutional dimension (respect for a country's institutions). *Id.* at 82.

⁷⁶ See Kofi Annan, Sec'y-Gen., UN, Address to the African Union Summit 2 (July 6, 2004), transcript available at <http://www.africa-union.org/au%20summit%202004/speech%20Mr%20Kofi%20Annan%2006-07-04.pdf> (noting "the root causes of insecurity and underdevelopment" often lie in poor governance).

⁷⁷ *Id.* at 3. Daniel Kaufmann has argued that there is "a growing consensus among both academics and policymakers that good governance provides the fundamental basis for economic development." Kaufmann, *supra* note 75, at 83. He is of the view that governments receive a "development dividend" from better governance. *Id.*

⁷⁸ Kaufmann, *supra* note 75, at 84.

⁷⁹ Augusto Lopez-Claros, *Executive Summary* to Kaufmann, *supra* note 75, at xiii.

⁸⁰ See *id.* at xxiv. The report agrees that a strong case can be made for "secure property rights as the key to promoting investment in Africa." *Id.*

⁸¹ See Francis N. Botchway, *Good Governance: The Old, the New, the Principle*,

Protection of human rights, another aspect of good governance, is essential to providing a climate where all members of society are able to contribute their talents and skills to the economic and social life of a society.⁸² In Africa, human rights problems have created an environment of chronic instability, thereby preventing substantial segments of the population from actively participating in the civic and economic life of their societies.⁸³ Civil strife, political repression, and gender inequalities—all of which implicate the issue of human rights—have impeded economic productivity in the continent.⁸⁴ While human rights protection is not the sole solution to the problems of the region, it is recognized as the foundation of stability, which is necessary for economic progress.⁸⁵ Commendably, the emphasis of human rights protection as part of the good governance initiative within NEPAD would put pressure on African countries to take more effective measures to shore up human rights protection across the continent.⁸⁶

The importance of popular participation in government to the concept of good governance is buttressed by the fact that popular participation fosters accountability, an element vital to making governments responsive to the needs of the governed. The link between popular participation in government and economic progress is, however, less certain⁸⁷ because some hold the view that authoritarianism as better suited for promoting economic

and the Elements, 13 FLA. J. INT'L L. 159, 195 (2001).

⁸² See YI FENG, *DEMOCRACY, GOVERNANCE AND ECONOMIC PERFORMANCE: THEORY AND EVIDENCE* 295 (2003) (arguing that "a political system characterized by freedom and stability is best suited to promoting a growth-oriented economic agenda").

⁸³ See Dejo Olowu, *Human Development Challenges in Africa: A Rights-Based Approach*, 5 SAN DIEGO INT'L L.J. 179, 208 (2004).

⁸⁴ *Id.*

⁸⁵ See Ubong E. Effeh, *Sub-Saharan Africa: A Case Study on How Not to Realize Economic, Social, and Cultural Rights, and a Proposal for Change*, 3 NW. U. J. INT'L HUM. RTS. 2, 76 (2005).

⁸⁶ See generally James Thuo Gathii, *Good Governance as a Counter-Insurgency Agenda to Oppositional and Transformative Social Projects in International Law*, 5 BUFF. HUM. RTS. L. REV. 107 (1999) (discussing how governance arguments are sometimes used to put neo-liberal economic views at the forefront of human rights).

⁸⁷ See Joseph Siegle, Michael Weinstein, & Morton Halperin, *Why Democracies Excel*, FOREIGN AFF., Sept.-Oct. 2004, at 57.

development.⁸⁸ China, for example, has made remarkable economic progress in the past few decades, although its democratic credentials remain in dispute.⁸⁹ Regardless of whether popular participation is a predicate for economic progress, it is evident that popular participation promotes public accountability and that accountable governments have a heightened incentive to govern in accordance with the wishes and interests of their citizenry. Periodic renewals of political mandates provide an opportunity for debate and dialogue on solutions to the problems facing the electorate, thereby enhancing the likelihood of effective government policies.⁹⁰ Absent periodic renewals of mandates, the governed are unable to provide a check on the tendency of public officials to use the instruments of government to promote personal rather than public interests.⁹¹

To be sure, governance is not the only force behind economic development. Sound economic, trade, social, and other government policies are as important as good governance.⁹² However, when "governance is poor, policymaking in other areas

⁸⁸ See, e.g., GEORG SORENSEN, *DEMOCRACY AND DEMOCRATIZATION* 64 (1993); see also M.G. Quibria, *Growth and Poverty: Lessons from the East Asian Miracle Revisited*, ASIAN DEV. BANK INST. RESEARCH PAPER 33, 62-65 (2002) (discussing the economic success of authoritarian regimes in East Asia).

⁸⁹ See GREG MASTEL, *THE RISE OF THE CHINESE ECONOMY: THE MIDDLE KINGDOM EMERGES* (1997).

⁹⁰ When authoritarian governments succeed in promoting economic development, it is often because of the implementation of effective economic policies against the background of a pro-business culture. As Quibria has noted, "whether politically autocratic or not, [successful] economies provided framework critical to economic freedoms and structure of market-supporting institutions needed for the economy to blossom." Sorensen, *supra* note 88, at iv. In the African context, authoritarian and unaccountable regimes have not been successful in creating the right climate for economic progress. Accountable governments have a greater incentive to do so. *Id.*

⁹¹ See David S. Samford, Note, *Cutting Deals in Smoke-filled Free Rooms: A Case Study in Public Choice Theory*, 87 KY. L.J. 845, 848 (1999). Public choice theory has been instrumental in popularizing the view that whether acting in the public or private capacity, individuals are usually motivated by self-interest. *Id.* at 848. This theory has helped promote a healthy skepticism of the motivations of public officials. *Id.* at 847.

⁹² See generally Peter Nyikuli, *Unlocking Africa's Potential: Some Factors Affecting Economic Development and Investment in Africa*, 30 L. & POL'Y INT'L BUS. 623 (1999) (stating the importance of trade, environmental, aid, and other policies in the economic development of Africa).

is also, and often, compromised.”⁹³

Poor governance has long been prevalent in Africa.⁹⁴ Many African countries are not just poor, but also poorly governed.⁹⁵ According to the Economic Commission for Africa, the “vast majority of African countries recognize that political and economic mismanagement, denial of democracy and human rights, and the existence of weak institutions all deepen the continent’s poverty . . . and make achievement of any sustainable development goal more elusive.”⁹⁶ Poor governance negatively affects African countries in various ways. For example, it partly explains why African countries have not been very successful in attracting foreign investments.⁹⁷ Investor confidence in a country often depends on governance issues, including the impartial enforcement of laws, regulatory burdens on businesses, quality of bureaucracy, effective systems for the enforcement of commercial obligations, corruption, and institutional constraints on governmental action.⁹⁸ African countries have not hitherto demonstrated a strong commitment to addressing these governance issues, a factor that has significantly contributed to the deplorable state of the continent.⁹⁹

Consequently, improvement in governance is widely viewed as a precondition to economic and social progress in the continent.¹⁰⁰ Because of the centrality of good governance to the problems

⁹³ Kaufmann, *supra* note 75, at 86.

⁹⁴ See WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH 60 (1989) (The bank noted that “underlying the litany of Africa’s development problems is a crisis of governance.”).

⁹⁵ Kaufmann, *supra* note 75, at 86 (“38 out of the 46 countries in the region are both poorer than the world average, and also exhibit worse governance than the world average.”).

⁹⁶ ECONOMIC COMMISSION FOR AFRICA, *supra* note 18, at 7.

⁹⁷ See Peter Mutharika, *Some Thoughts on Rebuilding African State Capacity*, 76 WASH. U. L.Q. 281, 283 (1998).

⁹⁸ See Nina B. Bubnova, *Governance Impact on Private Investment: Evidence from the International Patterns of Infrastructure Bond Risk Pricing* xii (World Bank Technical Paper No. 488, Aug. 2000), available at <http://www.worldbank.org/> (go to “Publications”, “Documents and Reports” and type “WTP488”) (arguing that governance risk has a strong impact on investor confidence).

⁹⁹ Mutharika, *supra* note 97, at 284.

¹⁰⁰ ECONOMIC COMMISSION FOR AFRICA, *supra* note 18, at 9.

plaguing Africa, foreign investment, debt relief, and foreign aid are now frequently conditioned on the recipient country improving its standards of governance.¹⁰¹ The advocates of the African renaissance¹⁰² realized that if their goal of repositioning the continent for economic growth and social progress was to be successful, it was necessary to devise a system for restoring the confidence of the international community in Africa's commitment to the implementation of pro-growth policies and practices.¹⁰³ It was also vital to establish democratic and accountable institutions to implement these policies.¹⁰⁴

NEPAD is a means for African countries to stipulate standards and practices conducive to sound economic, political, and corporate governance.¹⁰⁵ It requires members to commit to the implementation of identified core standards and practices aimed at promoting these goals. The drafters of NEPAD realized that it was not sufficient merely to require commitment to these standards and practices. The history of African cooperation is littered with the remnants of various well-intended economic blueprints that were either not implemented or were improperly executed. The experience of African economic underdevelopment has not been one of a lack of good ideas or effective models for building the foundations of economic progress; instead, it has been one of poor execution and a lack of fidelity to promises.¹⁰⁶ The drafters of NEPAD, therefore, felt that it was necessary not only to

¹⁰¹ *Id.* at 7.

¹⁰² Mosoti, *supra* note 48, at 146. The African renaissance, a concept popularized by the South African President Thabo Mbeki, is a vision for the rebirth, renewal and revival of the continent. *Id.* Its advocates stress the importance of political, economic and social reforms as a means of revitalizing the continent. *Id.*; see also Nmehielle, *supra* note 9.

¹⁰³ Hope, *supra* note 3, at 303-04.

¹⁰⁴ *New Partnership*, *supra* note 16, ¶¶ 49, 79.

¹⁰⁵ Ousmane Deme, *Between Hope and Scepticism: Civil Society and the African Peer Review Mechanism* 23 (Partnership Africa Canada, Occasional Paper, Oct. 2005), at 1, available at <http://www.pacweb.org/e/images/stories/documents> (click on "between hope and sce..>" dated '19-Oct-2005 10:11").

¹⁰⁶ See Sonny Nwankwo & Darlington Richards, *Privatization: The Myth of Free Market Orthodoxy in Sub-Saharan Africa* 14 INT'L J. PUB. SECTOR MGMT. 165, 172 (2001). In reviewing recent privatization initiatives in Africa, Nwankwo and Richards note that implementation failures of privatization on the continent are largely due to corruption and mismanagement. *Id.*

enshrine core standards and practices, but also to provide a process for ensuring that members comply with them.¹⁰⁷ The APRM became the solution.¹⁰⁸

Because of NEPAD's emphasis on the need for Africans to be at the center stage of finding solutions to the problems of the continent, an indigenous peer review mechanism was viewed as critical.¹⁰⁹ In recognition of the importance of the efficient use of foreign assistance, donor countries and organizations have been conditioning their financial and technical assistance on the implementation of reforms in recipient countries and have been subjecting recipient countries to assessment reviews.¹¹⁰ African countries have expressed concern about the fairness and predictability of these assessments and have argued the need for an African framework of peer assessment and monitoring. According to Paul Kagame, the President of Rwanda, "African countries have

¹⁰⁷ Paul Kagame, President of Rwanda, Corporate Governance and the African Peer Review Mechanism, Address at the COMESA Summit I (June 7, 2004), transcript available at http://www.sarpn.org.za/documents/d0000838/P950-Kagame_June2004.pdf#search=%22kagame%2C%20corporate%20governance%22. NEPAD countries decided to "develop a culture of peer-assessment in order to determine to what extent [they] are complying with agreed codes, standards, and commitments that underpin good governance and sustainable development." *Id.*

¹⁰⁸ AFRICAN MINISTERS OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT, THIRTY-SIXTH SESSION OF THE COMMISSION/CONFERENCE OF AFRICAN MINISTERS OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT (June 1, 2003), <http://www.uneca.org> (search site for "ministerial statement, 1 June 2003" to go directly to document) According to African Ministers of Finance, the review mechanism is expected to "provide a systematic assessment that will allow [members] to track the progress of projected outcomes, identifying and reinforce best practices, assess capacity gaps, and implement the required corrective actions." *Id.* So far, twenty-three African countries have acceded to the APRM: Algeria, Angola, Benin, Burkina Faso, Cameroon, Egypt, Republic of Congo, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Mali, Malawi, Mauritius, Mozambique, Nigeria, Rwanda, South Africa, Senegal, Sierra Leone, Tanzania and Uganda. Press Release, NEPAD, Press Release on the 4th Summit of the APR Forum to be held 22 Jan. 2006, Khartoum, Sudan (Jan. 21 2006), <http://www.nepad.org/2005/files/aprm/PressRelease21012006.pdf>.

¹⁰⁹ See NEPAD, OBJECTIVES, STANDARDS, CRITERIA AND INDICATORS FOR THE AFRICAN PEER REVIEW MECHANISM ¶ 1.2, available at <http://www.nepad.org/2005/files/documents/110.pdf> [hereinafter *Indicators*].

¹¹⁰ See Maurizio Carbone, *Assessing the European Community Development Policy: The OECD Development Assistance Committee (DAC) Peer Review*, THE COURIER ACP-EU, Sept.-Oct. 2002, at 34, available at http://europa.eu.int/comm/development/body/publications/courier/courier194/en/en_034.pdf.

been subjected to assessment methods and standards determined by bilateral and multilateral donor agencies, which, needless to say, kept shifting goal posts, or used different yardsticks, depending on their whims.”¹¹¹ He further noted that these assessments “often lacked credibility, consistency, and mutual accountability.”¹¹² By emphasizing the issue of peer monitoring, African countries wanted to reassert their control of the process for assessing their progress toward institutional and democratic reforms.¹¹³ Peer monitoring by African countries represents, in part, an effort to reverse a history of “donor-driven conditionalities” by promoting mutual accountability within the continent.¹¹⁴

What do NEPAD and the African Union hope to achieve through the APRM? Before discussing the expectations of NEPAD and the African Union from the review process, it is important to describe the concept of peer review and explain its role in promoting governmental reforms. Peer review is the systematic examination and assessment of the performance of a state by its peers or by designated institutions.¹¹⁵ It is usually a non-adversarial process aimed at obtaining information from the country that is being reviewed and using the information to assess its compliance with stipulated policies, practices, and principles. The most common uses of the peer review process are “the assessment of the performance of a country in its implementation of policy recommendations and guidelines” and “an examination of the consistency and coherence with respect to the country’s own

¹¹¹ Kagame, *supra* note 107, at 1.

¹¹² *Id.*

¹¹³ See Nkosanzana Zuma, S. Afr. Minister of Foreign Affairs, NEPAD’s Peer Review Mechanism, Speech at the 2nd Annual Meeting of the APRM Panel of Eminent Persons 2 (Oct. 3, 2003), transcript available at http://www.sarpn.org.za/documents/d0000564/P518_Zuma_03102003.pdf (noting that “the APRM would be more about ownership of the process and adapting it to circumstances that are relevant to Africa through identified areas of priority[.]”).

¹¹⁴ See Adedeji, *supra* note 57, at 9.

¹¹⁵ United Nations Economic Commission for Africa, *The African Peer Review Mechanism: Process and Procedures*, Paper Presented at the NEPAD Workshop held in Cape Town, October 2002, in AFR. SEC. REV., VOL. 11, NO. 4, 2002, available at www.iss.co.za/pubs/ASR/11no4/feature1.html.

policies.”¹¹⁶ For example, in the context of environmental performance and development assistance, peer reviews are typically used to evaluate the performance of a country against the background of indicators and benchmarks that provide specific numerical targets.¹¹⁷ In the legal context, peer reviews are traditionally used to monitor “compliance with international norms such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.”¹¹⁸

Peer reviews have both quantitative and qualitative aspects, both of which are necessary for the effectiveness of the process.¹¹⁹ The qualitative aspect involves a thorough assessment of the performance of a country using detailed and publicized criteria. The quantitative aspect involves the use of scoreboards to rank the performance of country, such as the Global Competitiveness Report.¹²⁰ Publicized ranking of performance operates to ventilate the shortcomings of a country and to encourage or “shame” the country into taking remedial measures.¹²¹

In addition to a monitoring function, peer reviews also provide a forum for countries to share experiences and exchange ideas on how to promote mutually agreed-upon goals and objectives.¹²² Peer interaction is particularly useful among countries that have common interests or that face common challenges. By exchanging ideas and benchmarking their performance, these countries are able to identify areas of weaknesses in their policy strategies and obtain feedback from their peers on how to make improvements.¹²³ Because peer reviews are usually voluntary and non-adversarial, participating countries are able to interact in an atmosphere of trust and with shared confidence in the legitimacy of the review

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ See MALACHIA MATHOHO, THE AFRICAN PEER REVIEW MECHANISM: A PANACEA FOR AFRICA’S GOVERNANCE CHALLENGES? 8 (2003), available at <http://www.cps.org.za/cps%20pdf/polbrief29.pdf>.

¹²⁰ See generally THE GLOBAL COMPETITIVENESS REPORT 2005-2006, *supra* note 75.

¹²¹ See FABRIZIO PAGANI, PEER REVIEW: A TOOL FOR CO-OPERATION AND CHANGE 6, (2002), available at <http://www.oecd.org/dataoecd/33/16/1955285.pdf>.

¹²² *Id.* at 11.

¹²³ Hope, *supra* note 3, at 290.

process.¹²⁴

The peer review process usually results in a report that outlines the performance and shortcomings of the country reviewed and also recommends improvements.¹²⁵ Circulation of the report to the members of the organization conducting the review provides an opportunity for the exercise of peer pressure, a necessary ingredient for the effectiveness of peer reviews.¹²⁶ Peer pressure arises from "a mix of formal recommendations and informal consultations by peer countries; public scrutiny, comparisons, and ranking among countries; and the impact of the foregoing on public opinion, policy makers, and other stakeholders."¹²⁷ Unlike sanctions, peer pressure is not coercive.¹²⁸ Rather, it is a means of "soft persuasion," a necessary encouragement for the reviewed country to reform and to rededicate itself to accomplishing set goals and standards.¹²⁹

Circulation of the report to members of the peer group is typically followed by wider publication.¹³⁰ When the report enters the public domain, citizens and pressure groups are able to exert influence on the reviewed country to address the shortcomings identified in the report. Public scrutiny is useful in persuading countries to take corrective measures.¹³¹ Reiterating the importance of publicizing the outcomes of peer reviews, the Economic Commission for Africa has noted that the experience of peer reviews in other parts of the world indicates that the effectiveness of the mechanism is increased when outcomes are publicized.¹³² In the Commission's view, the public scrutiny that comes with publicizing the findings is the feedback most likely to

¹²⁴ PAGANI, *supra* note 121, at 13.

¹²⁵ *Peer Review*, *supra* note 22, ¶ 22.

¹²⁶ Hope, *supra* note 3, at 290.

¹²⁷ *Id.*

¹²⁸ See Zuma, *supra* note 113, at 2 (stating that the ARRM is "not an instrument for punishment or exclusion, but rather it is a mechanism to identify strong points or areas, share them and to rectify weak areas.").

¹²⁹ MATHOHO, *supra* note 119, at 7.

¹³⁰ *Peer Review*, *supra* note 22, ¶ 25.

¹³¹ Hope, *supra* note 3, at 290.

¹³² United Nations Economic Commission for Africa, *supra* note 115.

encourage the reviewed country to take corrective actions.¹³³

The APRM is founded on an appreciation of the foregoing benefits of peer review and peer pressure in getting countries to comply with mutual goals and objectives.¹³⁴ According to its Base Document, the APRM is “an instrument voluntarily acceded by Member States of the African Union as an African self-monitoring mechanism.”¹³⁵ The document further defines the mandate of the APRM as ensuring that “the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes, and standards contained in the Declaration of Democracy, Political, Economic, and Corporate Governance.”¹³⁶ It further defines the primary purpose of the APRM as fostering “the adoption of policies, standards, and practices that lead to political stability, high economic growth, sustainable development, and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practice.”¹³⁷

Apart from encouraging members to adopt and implement policies and practices consistent with the mutually agreed upon values and standards of political, economic, and corporate governance, the APRM is also aimed at promoting greater transparency in the affairs of its participants.¹³⁸ The APRM works toward greater transparency by requiring public disclosure of government policies, measures, and practices.¹³⁹ Public disclosure will create greater transparency, and by so doing, will promote good governance. This is because an informed citizenry is better

¹³³ *Id.*

¹³⁴ *Peer Review*, *supra* note 22, ¶ 3.

¹³⁵ *Id.* ¶ 1. Membership of the APRM is open to members of the African Union. *Id.* ¶ 5. In order for a participating state to withdraw from the APRM, the state must submit written notice to the NEPAD Secretariat expressing their desire to terminate their involvement. AFRICAN PEER REVIEW MECHANISM, MEMORANDUM OF UNDERSTANDING ON THE AFRICAN PEER REVIEW MECHANISM, ¶ 32, *available at* <http://nepad.org/2005/files/documents/111.pdf> [hereinafter MEMORANDUM OF UNDERSTANDING].

¹³⁶ *Peer Review*, *supra* note 22, ¶ 2.

¹³⁷ *Id.* ¶ 3.

¹³⁸ Hope, *supra* note 3, at 296-97.

¹³⁹ See NEPAD, COUNTRY SELF-ASSESSMENT FOR THE AFRICAN PEER REVIEW MECHANISM 50, *available at* <http://www.nepad.org/2005/files/documents/156.pdf> [hereinafter COUNTRY SELF-ASSESSMENT].

able to assess the performance of its government and to hold it accountable for the implementation of appropriate policies.

To set these processes in motion, the APRM sends a questionnaire out to participating countries.¹⁴⁰ The questionnaire issued by the APRM elicits detailed information about the policies and practices of the government in the areas of democracy and political governance, economic governance and management, corporate governance, and socio-economic development.¹⁴¹ The answers supplied by the country are included in the APRM report and put in the public domain, thereby providing information on government operations and fostering public surveillance of government operations. Transparency, coupled with the free flow of ideas, makes government policies predictable and fosters "efficient, customized, and effective policies."¹⁴²

Allied with the APRM's goal of promoting transparency of government policies and practices is the goal of promoting accountability in the continent.¹⁴³ Africa's history of dictatorships and ineffective governments is well known.¹⁴⁴ Corruption looms as a large problem in the continent because of the lack of accountability of public officials.¹⁴⁵ Corruption retards economic

¹⁴⁰ *Id.*

¹⁴¹ African Peer Review Mechanism–Questionnaire, <http://www.aprmnigeria.org/apcer.htm> (last visited Oct. 10, 2006). The APRM invites reviewed countries to discuss the questionnaire and to adapt it to their own particular conditions. During the Ghana review, for example, the National Governing Council, the agency charged with the responsibility of overseeing APRM reviews in Ghana, felt it necessary to incorporate into the questionnaire issues related to taxation. See NAPRM, Report on National Stakeholder Consultations: Implementing the APRM in GHANA, CHALLENGES AND PROSPECTS 21, available at <http://www.undp.org/agf/papers/Ghana%20Main%20Report%20on%20APRM%20for%20AGF%20VI.pdf>.

¹⁴² Siegle, Weinstein, & Halperin, *supra* note 87, at 64.

¹⁴³ *Peer Review*, *supra* note 22, ¶ 16 (noting that the APRM process will "promote mutual accountability," thereby ensuring "compliance with best practice").

¹⁴⁴ See, e.g., SAMUEL DECALO, PSYCHOSES OF POWER: AFRICAN PERSONAL DICTATORSHIPS (1989).

¹⁴⁵ See generally TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 2006 (2006), available at http://www.transparency.org/publications/gcr/download_gcr#download (noting that health system corruption is less likely to occur in countries that adhere to the rule of law, institute effective civil service codes, and put in place strong accountability mechanisms).

efficiency and operates as a “regressive tax” on the population.¹⁴⁶ In the African context, corruption is prevalent partly because the institutional framework for holding public officials accountable remains rudimentary or non-existent in most of the continent.¹⁴⁷ By compiling, digesting, and benchmarking the policies, practices, and performance of governments on core governance issues, the APRM will help illuminate areas of deficiency in public accountability and equip civil society and pressure groups to campaign to get the issues addressed. In this regard, the peer review process will “provide the impetus for conscious efforts at improving public accountability” across the continent.¹⁴⁸

Another key goal of the peer review process is that of capacity building.¹⁴⁹ Peer reviews are usually a learning process for the country under review, the reviewers, and for the peer participants. This learning process is especially important in African countries, many of which are not familiar with the process of benchmarking and the use of objective criteria and quantitative indicators in assessing the performance of governments.¹⁵⁰ In preparing for APRM reviews, officials in these countries will acquire the skills and competencies to do the kind of qualitative analysis required in peer reviews. The learning curve will necessarily be steep. Public institutions in Africa are often weak and many have a deserved reputation for poor record keeping.¹⁵¹ Preparing for peer reviews will consequently be a challenging task for them. In the short run,

¹⁴⁶ Kaufmann, *supra* note 75, at 85 (suggesting that this “regressive tax” is borne disproportionately by the low-income groups who pay a significant part of their income in bribes to obtain access to public services).

¹⁴⁷ Some commentators have sought to internationalize the campaign against corruption in Africa by seeking to elevate corruption to the status of a crime in international law. See generally Paul Ocheje, *Refocusing International Law on the Quest for Accountability in Africa: The Case against the “Other” Impunity*, 15 LEIDEN J. INT’L L. 749 (2002) (suggesting that corruption of public officials should be elevated to the status of a crime in international law and that the International Criminal Court should be given jurisdiction over such matters).

¹⁴⁸ Hope, *supra* note 3, at 299.

¹⁴⁹ See PAGANI, *supra* note 121, at 12 (suggesting that peer reviews are an important capacity building instrument).

¹⁵⁰ Hope, *supra* note 3, at 305.

¹⁵¹ John Stremlau, *Nepad’s Peer Review Mechanism Still Work in Progress*, BUSINESS DAY, Nov. 4, 2002, available at <http://www.sarpn.org.za/documents/d0000132/index.php>.

weak institutions and poor record keeping will have a negative effect on the quality, comprehensiveness, and accuracy of report of the APRM. However, as competencies and record keeping improve, the system should become more reliable. Nonetheless, the financial difficulties facing NEPAD members make it difficult to find the resources for conducting effective qualitative analysis.¹⁵² In this regard, it is noteworthy that foreign partners of NEPAD and the African Union have pledged technical and other support in assisting in the work of the APRM.¹⁵³

The APRM is also expected to contribute to greater policy coherence in the continent.¹⁵⁴ This means that a more systematic approach is expected to aid in the articulation of economic and social policies, as is a more concerted effort to ensure proper implementation of these government policies. Coherent economic policies have not been the forte of African countries.¹⁵⁵ Many African countries have shifted between economic approaches without clearly articulating the strategies underlying the shifts.¹⁵⁶ Even when principles were clearly articulated, as in the African Charter for Popular Participation in Development and Transformation,¹⁵⁷ they were often implemented poorly, if at all. A key benefit of NEPAD is that it provides its members with a coherent blueprint for economic and social development,¹⁵⁸ and it

¹⁵² See John Ohiohenuan, *Nepad: Thinking Out of the Box* 16, available at <http://www.sarpn.org.za/documents/d0000548/intro.php>.

¹⁵³ See NEPAD, ANNUAL REPORT 2003/2004 38-39, available at <http://www.nepad.org/2005/files/documents/165.pdf#search=%22ADB%20NEPAD%20REPORT%202004%22> (commenting on the support of partner institutions to the APRM).

¹⁵⁴ Hope, *supra* note 3, at 299.

¹⁵⁵ *Id.*

¹⁵⁶ See, e.g., DANI RODRIK, TRADE POLICY AND ECONOMIC PERFORMANCE IN SUB-SAHARAN AFRICA 46, available at <http://ksghome.harvard.edu/~drodrik/tp1.PDF> (noting that "trade reform in Africa has generally been erratic and marked by reversals and lack of credibility.").

¹⁵⁷ African Charter for Popular Participation in Development and Transformation (1990), available at <http://www.africanreview.org/docs/civsoc/arusha.pdf> (adopted in Arusha, Tanzania, Feb. 1990).

¹⁵⁸ It should be noted that there remains some debate about whether the liberal economic agenda adopted by NEPAD is the most effective strategy for promoting economic growth on the continent.

also provides a mechanism, the peer review mechanism, by which member compliance is encouraged and measured.¹⁵⁹ NEPAD's blueprint is a market-based strategy for promoting sustainable development.¹⁶⁰ Peer monitoring of compliance will help "tip the domestic political scales in favor of progressive, outward-looking policy and against retrograde choices."¹⁶¹

Compliance with the NEPAD blueprint is facilitated by the fact that each review report must propose an action plan for addressing the problems and shortcomings identified during the review process.¹⁶² The country under review is required to respond to the tentative findings of the review panel by proposing a time-based plan of action for rectifying problem areas.¹⁶³ The plan would enable members of the NEPAD and other stakeholders to monitor the progress of the reviewed country.¹⁶⁴ Where the reviewed country has demonstrated a willingness to address the identified problems, participating countries are committed to "provide what assistance they can, as well as to urge donor governments and agencies also to come to the assistance of the country reviewed."¹⁶⁵

As indicated above, NEPAD members expect that by implementing policies conducive to good governance and by instituting a system of peer monitoring of these policies, foreign investors and governments will regain confidence in the economic and political stability of the continent.¹⁶⁶ The mutual commitment of NEPAD members to good governance and their agreement to

¹⁵⁹ *Peer Review*, *supra* note 22, at ¶ 2.

¹⁶⁰ *See generally New Partnership*, *supra* note 16.

¹⁶¹ *Hope*, *supra* note 3, at 299.

¹⁶² African Peer Review Mechanism, Organisation and Processes, ¶ 7.13, NEPAD/HGSIC-3-2003/APRM/Guideline/O&P, Mar. 9, 2003, available at <http://nepad.org/2005/files/documents/48.pdf> [hereinafter Organisation and Processes].

¹⁶³ *Peer Review*, *supra* note 22, ¶ 21. According to the APRM Peer Review, the government under review is required to discuss the draft report of the review and "to put forward its own views on how the identified shortcomings may be addressed." *Id.* These responses are added to the report of the review team. *Id.*

¹⁶⁴ Organisation and Processes, *supra* note 162, ¶ 7.19.

¹⁶⁵ NEPAD, *African Peer Review Mechanism*, ¶ 1, AHG/235(XXXVIII) Annex 2, <http://nepad.org/2005/files/documents/49.pdf>.

¹⁶⁶ *Hope*, *supra* note 3, at 303-04.

peer review each other represent one branch of the NEPAD partnership.¹⁶⁷ The other branch of the partnership is that between NEPAD members and the international community.¹⁶⁸ This second branch is built around foreign support and assistance to promote the realization of the goals of the first partnership. In a sense, the APRM is also a means of signaling to the international community the seriousness of African countries in their commitment to good governance. In return, foreign assistance and aid is expected.¹⁶⁹

Some commentators have argued that this expectation of foreign assistance may be unrealistic.¹⁷⁰ It remains to be seen whether a vigorous implementation of the NEPAD agenda and an effective use of the APRM will increase more foreign investment and aid to Africa. In any event, whether or not foreign assistance materializes, the APRM process will be an indisputable success if it succeeds in its broader objective of promoting good governance in the continent. While foreign investment and assistance will be beneficial in providing the capital required for rebuilding the economies of African countries, governance alone will go a long way in setting the foundation necessary for sustainable economic and social development of a long suffering continent. The benefits of experience-sharing, peer learning, and peer pressure—components of the APRM regime—will resonate whether or not foreign assistance materializes.

III. The Review Process

To properly assess the potential of the APRM, it is crucial to understand the process for conducting reviews and the criteria used by the APRM in conducting reviews. This part examines the institutional framework of the APRM and the stages involved in an APRM review. The next part considers the criteria used for evaluating the performance of countries.

The review process of the APRM has four organizational

¹⁶⁷ *New Partnership*, *supra* note 16, ¶¶ 47, 49.

¹⁶⁸ *Id.* ¶ 48.

¹⁶⁹ *Id.* at ¶¶ 62, 66.

¹⁷⁰ See, e.g., Jakkie Cilliers, *NEPAD's Peer Review Mechanism 1* (Institute for Security Studies, Issue Paper, Nov. 2002), available at http://www.iss.co.za/Pubs/Papers/64/paper_64.pdf.

components: the Committee of Participating Heads of State and Government (APR Forum), the Panel of Eminent Persons (APR Panel), Country Review Team (APR Team), and the APRM Secretariat.¹⁷¹ Each component has a defined set of responsibilities in the implementation of the review process.¹⁷²

A. *The APR Forum*

The APR Forum is the plenary decision-making body with the ultimate responsibility of defining the objectives of the review process, stipulating the review process, conducting reviews, and monitoring the implementation of review reports.¹⁷³ The APR Forum is comprised of those heads of state and governments of member states of the African Union whose countries have acceded the APRM regime.¹⁷⁴ The APR Forum receives and discusses review reports and communicates its recommendations to the government of the reviewed country.¹⁷⁵ The forum is expected to use peer dialogue and persuasion, including the offer of assistance and the use of other appropriate measures, to encourage the reviewed country to implement the suggested changes.¹⁷⁶ The forum is also required to publicize review reports¹⁷⁷ as a way of promoting civic discussion of the challenges facing the reviewed country and of bringing public pressure on the reviewed country to implement the recommended reforms. Recognizing that foreign assistance may be needed for the implementation of panel recommendations, the APR Forum is also charged with the responsibility of persuading foreign partners to contribute to the implementation of reforms “by providing technical and financial assistance.”¹⁷⁸

¹⁷¹ Organisation and Processes, *supra* note 162.

¹⁷² See *id.* (outlining the responsibilities of the review process components).

¹⁷³ *Id.* ¶ 2.1.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* ¶ 2.2.

¹⁷⁶ *Id.* ¶ 2.2(d).

¹⁷⁷ *Id.* ¶ 2.2(g).

¹⁷⁸ Organisation and Processes, *supra* note 162, ¶ 2.2(e).

B. *The APR Panel*

The primary purpose of the APR Panel is to oversee the conduct of the APRM.¹⁷⁹ The panel is also responsible for ensuring the credibility and integrity of the review process.¹⁸⁰ Panel members, who are to be Africans of “high moral stature and demonstrated commitment to the ideals of Pan-Africanism,”¹⁸¹ are required to have distinguished records in “areas of political governance, macro-economic management, public financial management and corporate governance.”¹⁸² They are to be nominated by participating countries and appointed by the AFR Forum.¹⁸³ To guarantee confidence and trust in the review process, the composition of the APR Panel is required to reflect a “broad regional balance, gender equity[,] and cultural diversity.”¹⁸⁴ Because even a talented body of eminent persons may be faced with issues outside the areas of competence of its members, the APR Panel is to have access to a pool of technical experts.¹⁸⁵ As a body comprised of reputable Africans with distinguished records of professional accomplishments, the APR Panel is expected to ensure that the review process is professional, credible, and efficient.¹⁸⁶ The APR Panel appoints APR teams to conduct country reviews and to report their findings.¹⁸⁷ The panel is required to assess the recommendations contained in team reports¹⁸⁸ and make recommendations to the APR Forum on the

¹⁷⁹ *Peer Review*, *supra* note 22, ¶ 6.

¹⁸⁰ *Id.* ¶ 10.

¹⁸¹ Organisation and Processes, *supra* note 162, ¶ 3.6. See generally P. Olanwuche Esedebe, PAN-AFRICANISM: THE IDEA AND MOVEMENT 1776-1991 (2nd ed., 1994) (discussing the origins and impact of Pan-Africanism on the African continent).

¹⁸² *Peer Review*, *supra* note 22, ¶ 7.

¹⁸³ *Id.*

¹⁸⁴ Organisation and Processes, *supra* note 162, ¶ 3.6.

¹⁸⁵ The list of technical experts is to be compiled through a competitive process. Since one of the goals of the APRM process is capacity building in Africa, the APR Panel is required to use African technical experts where possible. Organisation and Processes, *supra* note 162, ¶ 3.8.

¹⁸⁶ *Id.* ¶ 3.1(a).

¹⁸⁷ *Id.* ¶ 3.1(b).

¹⁸⁸ *Id.* ¶ 3.1(d).

best strategies for implementing them.¹⁸⁹ Since membership of country review teams varies from case to case, the APR Panel, whose members serve for terms of up to four years and retire by rotation, ensures the consistency of standards applied in country reviews and provides quality control over the operations of the APRM. In addition to this oversight responsibility, the panel is required to facilitate the implementation of country reports by making recommendations to the APR Forum regarding “measures that could be taken to assist the [reviewed] country in the improvement of its governance and socio-economic development performance.”¹⁹⁰ Consistent with the rationale of the peer review process, “the recommendations of the [APR] Panel are not meant to punish or exclude countries,” but to assist participating countries to “identify [their] own weaknesses, and to find ways and means of addressing them.”¹⁹¹

C. *The APR Team*

Before acceding to the APRM, a country is required to outline a time-bound Programme of Action for implementing the “Declaration on Democracy, Political, Economic[,] and Corporate Governance.”¹⁹² The APR team conducts actual in-country review of participating countries is to determine compliance with core commitments and to suggest improvements.¹⁹³ The Team examines the progress made by the reviewed country in implementing the Declaration.¹⁹⁴ The Team is required to visit the reviewed country to verify background information, obtain the contribution of stakeholders, discuss the implementation of the country’s plan of action, and address identified weaknesses and shortcomings in the agreed areas of governance and

¹⁸⁹ *Id.* ¶ 3.1(e).

¹⁹⁰ *Id.* ¶ 3.1(f).

¹⁹¹ Stals, *supra* note 24.

¹⁹² *Peer Review*, *supra* note 22, ¶13.

¹⁹³ NEPAD, GUIDELINES FOR COUNTRIES TO PREPARE FOR AND TO PARTICIPATE IN THE AFRICAN PEER REVIEW MECHANISM ¶ 42 (2003), available at <http://nepad.org/2005/files/aprm/aprmguidelinesforcountryreview200104final.pdf> [hereinafter GUIDELINES].

¹⁹⁴ Hope, *supra* note 3, at 292.

development.¹⁹⁵ During the country visit, the Team must consult extensively with government officials, agencies, and civil society organizations in the country.¹⁹⁶ The Team must also assess the good faith attempts of the country to comply with core commitments, note difficulties encountered by the country in its compliance efforts, and request suggestions from both the government and civil society on how further compliance could be facilitated.¹⁹⁷ The extensive consultation with government officials and agencies in the reviewed country is intended to provide the country with an adequate opportunity to explain its efforts to meet the core goals and to share its experiences on the journey toward good governance. These extensive consultations with African experts and institutions are also helpful in assuring the reviewed country of the credibility of the process. Moreover, broad consultation ensures that participating countries are at the center of finding solutions to their social and economic problems.¹⁹⁸

In conducting technical reviews, the team relies on technical experts, partner institutions of the APRM,¹⁹⁹ and other units of the African Union.²⁰⁰ The use of partner institutions is aimed at

¹⁹⁵ GUIDELINES, *supra* note 193, ¶ 45.

¹⁹⁶ *Id.* ¶ 44. The APR Team is required to “carry out the widest possible range of consultations with government officials, political parties, parliamentarians, and representatives of civil society organizations (including the media, academia, trade unions, business and professional bodies).” *Id.*

¹⁹⁷ *Id.* ¶¶ 23, 45.

¹⁹⁸ See Press Release, NEPAD News, *supra* note 59, at 2. Bernard Kouassi, the Executive Director of the APRM, has noted that “[n]ational ownership and leadership by the participating country are essential factors underpinning the effectiveness of the APRM.” *Id.*

¹⁹⁹ These institutions are to conduct technical assessments of the country under review. Organisation and Processes, *supra* note 162, ¶ 6.1.

²⁰⁰ It should be remembered that the APRM is a program of the AU and participation of other units of the AU in the review process would ensure that the full complement of expertise and skills available in the AU is used to achieve the goal of effective and efficient peer reviews. The APRM envisages the participation of organs of the AU, such as the African Commission on Human and Peoples’ Rights, the Conference on Security, Stability, Development and Cooperation in Africa, and the African Committee of Experts on the Rights and Welfare of Children. Organisation and Processes, *supra* note 162, ¶ 6.3. The involvement of organs of the AU in the review process would also help reduce the possibility of unnecessary duplication of resources and efforts in the monitoring of governance issues in the continent. *Id.*

encouraging broader institutional participation in the peer review mechanism. For example, the APRM has designated the United Nations Economic Commission for Africa (ECA) to conduct technical assessment in the area of economic governance and management and the African Development Bank (ADB) in the area of banking.²⁰¹ The ECA and the ADB both have long track records for excellence in their respective areas of competence, and their participation in the APRM will strengthen the professionalism of the review process as well as lend credence to the integrity and reliability of the process.

D. The APRM Secretariat

The APRM Secretariat provides “secretarial, technical, coordinating and administrative support services for the APRM.”²⁰² It prepares background documents for the country reviews, mobilizes and facilitates the provision of technical assistance to the countries under review, and monitors the progress of technical assessments.²⁰³ In coordinating the operation of the APRM, the Secretariat is expected to “work with a wide range of Partner institutions, including those that set international standards, oversight institutions, [and] African research and policy institutions engaged in policy advisory services.”²⁰⁴

There are five stages to the peer review process. Stage One consists of using background documents prepared by the Secretariat and materials supplied by national, regional, and international organizations to examine the economic and corporate governance and development climate in the country.²⁰⁵ The Secretariat is required to gather the following: relevant documents on the country under review, self-assessments done by the country, assessment reports on the country prepared by regional and international organizations, and other reviews of the country conducted by recognized bodies.²⁰⁶ The Secretariat is also

²⁰¹ *Id.* ¶ 6.2.

²⁰² *Id.* ¶ 4.1.

²⁰³ *Id.* ¶ 4.2.

²⁰⁴ *Id.* ¶ 6.6.

²⁰⁵ *Peer Review*, *supra* note 22, ¶ 18.

²⁰⁶ *GUIDELINES*, *supra* note 193, ¶ 21.

required to send a questionnaire to the country under review eliciting information on the review areas.²⁰⁷ The goal is to gather sufficient background documents to enable the Secretariat to write a “background document” on the country.²⁰⁸ In writing the background document, the Secretariat is expected to draw from reports or studies done by relevant international organizations.²⁰⁹ For example, the Secretariat is expected to extract information from reports completed by the ECA Governance Project, which has issued country studies on the state of governance in several African countries.²¹⁰ Reliance on these international documents, especially those drafted by African institutions and organs of the AU, will help avoid unnecessary duplications of effort and also reduce the compliance burden on reviewed countries in responding to requests from different bodies.

Drawing on the background document and the Programme of Action²¹¹ supplied by the country under review, the Secretariat has to prepare an “issues paper” outlining the challenges facing the country under review.²¹² The issues paper, which is to guide the country review process, is shared with the APR Partner Institutions and the country under review.²¹³ This limited circulation enables both the reviewed country and the partners to comment on the content of the paper and clarify or elaborate

²⁰⁷ *Id.* at III.2. The review areas are “Democracy and Political Governance, Economic Governance and Management, Corporate Governance, and Socio-Economic Development.” *Id.* The country uses the questionnaire as a basis for its self-assessment of performance in the review areas.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ United Nations Economic Commission for Africa, *supra* note 115. The country studies measure the performance of the countries based on more than eighty indicators focusing on political representation and rights, institutional effectiveness, and economic management and governance. *Id.*

²¹¹ Each participating state is required to outline a Programme of Action for implementing the Declaration on Democracy, Political, Economic and Corporate Governance. *Peer Review*, *supra* note 22, ¶ 13. Furthermore, a country that has completed its self-assessment in preparation for a review is required to develop “a preliminary Programme of Action building on existing policies, programmes, and projects.” GUIDELINES, *supra* note 193, ¶ III.3.

²¹² Organisation and Processes, *supra* note 162, ¶ 7.5(d).

²¹³ *Id.*

issues that are of concern to them. After circulating the issues paper, the Secretariat drafts and circulates a plan for the visit of the APR Team.²¹⁴

Stage Two is the Country Review Visit.²¹⁵ Before this stage, the APR Team should have reviewed the background documents, the issues paper, the Programme of Action submitted by the country under review, and other documents collected by the Secretariat. The team then travels to the reviewed country for consultations with public officials, private sector, and civil society organizations.²¹⁶ These consultations provide an opportunity for stakeholders to give feedback to the team on the country's progress and shortcomings in its journey toward good governance.²¹⁷ These consultations should enable the team to reach a "consensus with the stakeholders on the remaining issues or challenge areas and the steps that need to be taken to address them."²¹⁸

During Stage Three, the APR Team prepares a report summarizing its findings and analyzing the implications of these findings for the country's governance and socio-economic development.²¹⁹ In the report, the country's performance is measured against "the applicable political, economic and corporate governance commitments" it made during earlier stages in the process.²²⁰ Before submitting its final report, the APR Team is required to discuss its draft report with the country under review, with the objective of ensuring its accuracy and providing the government with an opportunity to respond to the team's findings by suggesting how the identified shortcomings will be addressed.²²¹

In its final report, the APR team is required to indicate whether

²¹⁴ *Id.* ¶ 7.5(e).

²¹⁵ GUIDELINES, *supra* note 193, ¶ 22.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Organisation and Processes, *supra* note 162, ¶ 7.11.

²¹⁹ *Id.* ¶ 7.12.

²²⁰ *Peer Review*, *supra* note 22, ¶ 20.

²²¹ Organisation and Processes, *supra* note 162, ¶ 7.14. The response of the country to the draft report is appended to the final report of the team. *Id.*

the reviewed country has expressed the intention to take corrective measures. The team must also state what resources are needed for the effective implementation of the corrective measures and indicate how long it will take for the country to implement the measures.²²² Team reports must contain specific measures to address the shortcomings and will include a time frame for their implementation.²²³ These measures are to be included in the reviewed country's Programme of Action.²²⁴ The stipulation of time-bound corrective measures should facilitate periodic assessments of the compliance of the reviewed country with promises and commitments made during the review.²²⁵

Stage Four involves the submission of the Team report to the APR Panel and then to the APR Forum for consideration and adoption. In adopting the report, the forum will decide the steps necessary for implementation.²²⁶ Because the APRM is a system of peer monitoring and support, it is expected that participating countries will assist the reviewed country in implementing the report, and where necessary, seek foreign assistance on its behalf.²²⁷ To reinforce the mutual learning and capacity building goals of the APRM, the APR Panel and the senior official of the participating countries are expected to meet to discuss Team reports and exchange ideas on the lessons learned from the process and canvass suggestions for improving the operation of the process.²²⁸

Stage Five, the final stage of the review process, involves publicizing the Team report and decisions of the APR Panel and the APR Forum on the report by putting them in the public domain.²²⁹ The report and decisions are also to be formally tabled

²²² *Peer Review*, *supra* note 22, ¶ 22. With regard to the resources needed to implement the corrective measures, the report should indicate how much the government itself can provide and "how much is to come from external sources." *Id.*

²²³ *Organisation and Processes*, *supra* note 162, ¶ 7.13.

²²⁴ *Id.*

²²⁵ *See Organisation and Processes*, *supra* note 162, ¶ 7.19 (detailing the follow-up stage of the APRM).

²²⁶ *Id.* ¶ 7.15.

²²⁷ *Peer Review*, *supra* note 22, ¶ 24.

²²⁸ United Nations Economic Commission for Africa, *supra* note 115.

²²⁹ *Organisation and Processes*, *supra* note 162, ¶ 7.17.

at “key regional and sub-regional structures such as the Summit of the African Union, the Pan-African Parliament, the African Commission on Human and Peoples’ Rights, the Peace and Security Council[,] and the Economic, Social and Cultural Council (ECOSOC) of the African union.”²³⁰ By putting the report and decisions in the public domain and by tabling them at key regional and sub-regional groups, public attention would be drawn to the findings of the APRM. Public pressure will also be brought to bear on the implementation of the recommendations. Moreover, the engagement of regional and sub-regional groups means that there is a larger forum, outside the APRM, for oversight of the steps being taken by the reviewed country to comply with the APRM recommendations.

APRM oversight of the implementation procedure is facilitated by the requirement that corrective measures recommended by the APR team should be detailed enough to become time-bound.²³¹ Furthermore, it is envisioned that reports, and decisions based on them, will suggest a date for review of the progress made by the reviewed country in implementing the recommendations.²³² During this follow-up period, the Secretariat is expected to assist the government of the reviewed country with capacity building and resource mobilization necessary to implement the report.²³³

IV. Measuring Performance

Participants in NEPAD and the APRM are committed to coordinating policies. They are also committed to individually adopting laws, programs, and standards that would help realize their mutual goals in four core areas: democracy and good political governance, economic governance and management, corporate governance, and socio-economic development.²³⁴ These core areas are those in which African countries have performed poorly. They are also areas that are commonly viewed as necessary to the

²³⁰ *Id.* ¶ 7.17

²³¹ *Id.* ¶ 7.13.

²³² *Id.* ¶ 7.19

²³³ *Id.*

²³⁴ NEPAD, DECLARATION ON DEMOCRACY, POLITICAL, ECONOMIC AND CORPORATE GOVERNANCE ¶ 6 (2005), available at <http://www.nepad.org/2005/files/documents/2.pdf> [hereinafter DECLARATION].

revitalization of the continent.²³⁵ By committing to improvements in these essential areas, African countries have demonstrated an initial commitment to reversing the continent's reputation of mismanagement and poor governance.

To give impetus to the commitment, NEPAD has devised indicators for measuring the performance of countries in the four core areas.²³⁶ One of the basic objectives of the APRM is to help participating states, through mutual assistance and peer pressure, in adopting and implementing the mutually agreed policies and programs in these four core areas.²³⁷ Through its periodic reviews of participating countries, the APRM is able to monitor and publicize its findings on the level of compliance of each participant with the stipulated indicative standards.²³⁸ This sharing of information about compliance with the indicative standards will enable participating countries to "encourage and support each other and exercise constructive peer dialogue and persuasion where necessary to ensure that all countries achieve full compliance" with agreed practices and standards.²³⁹

The aforementioned four core areas are the main ones that African countries have had difficulty tackling.²⁴⁰ African countries have therefore recognized the need to implement effective policies and practices in these clusters of issues that have adversely affected the quality of life of the people of the continent.²⁴¹ The following is a discussion of how the APRM assesses performance in these four core areas.

²³⁵ See generally Nyikuli, *supra* note 92.

²³⁶ See *Indicators*, *supra* note 109 (indicating the standards).

²³⁷ *Peer Review*, *supra* note 22, ¶ 3.

²³⁸ See APRM, *Country Review Report of the Republic of Ghana*, at 129-34 (June 2005), http://www.hss.de/downloads/Aprm_country_report.pdf. For example, in its review of Ghana the APRM noted that while Ghana was committed to improved governance it needed to address several issues to ensure compliance with the objectives of NEPAD and the APRM. These issues include capacity constraints, gender equity, corruption, unemployment, and external dependency. *Id.*

²³⁹ *Indicators*, *supra* note 109, ¶ 1.4. NEPAD also envisages that the sharing of information will promote "mutual learning in areas of high priority in NEPAD such as strengthening institutions of democracy and human rights, improving budgeting and financial management, fighting corruption[.]" *Id.* ¶ 1.6.

²⁴⁰ See generally Nyikuli, *supra* note 92.

²⁴¹ *Indicators*, *supra* note 109, ¶¶ 1.1-1.8.

A. *Democracy and Political Governance*

In its framework document, NEPAD acknowledged that “development is impossible in the absence of true democracy, respect for human rights, peace, and good governance.”²⁴² NEPAD’s democracy and political governance initiative is consequently aimed at strengthening the political and administrative systems of participating countries by emphasizing democratic values, accountability, transparency, the rule of law, and respect for human rights.²⁴³ These elements of liberal societies are largely underdeveloped on the African continent. Their cultivation will help in creating systems of accountable governments and in building functional societies in which individuals have the freedom and security to actualize their full potentials.

The key objectives of the participating countries in the area of democracy and governance are to enshrine constitutional democracy, promote human rights (with particular emphasis on the rights of women and children), fight corruption, and uphold the separation of powers, including the independence of the judiciary.²⁴⁴ As a consequence, NEPAD emphasizes the creation of liberal democracies.²⁴⁵ It does so by enshrining three components of its democratic agenda. First, NEPAD recognizes the importance of “constitutionally established provisions and institutions which enable citizens to enjoy their rights and freedom of membership of political associations of their choosing and free participation of these political groups and other associations in open political competition.”²⁴⁶ Second, NEPAD acknowledges the importance of the rule of law in ensuring that “individuals are subject to and treated equally according to the law, and that no one is exposed to arbitrary treatment by the state[.]”²⁴⁷ Third, NEPAD requires that participating countries promote “economic, social, cultural, civil, and political liberties” which will ensure the

²⁴² *New Partnership*, *supra* note 16, ¶ 79.

²⁴³ *Indicators*, *supra* note 109, ¶ 2.2.

²⁴⁴ *Id.*

²⁴⁵ *See* DECLARATION, *supra* note 234.

²⁴⁶ COUNTRY SELF-ASSESSMENT, *supra* note 139, at 18.

²⁴⁷ *Id.* at 18-19.

protection of the integrity and rights of citizens.²⁴⁸

Therefore, under NEPAD and the APRM project it is insufficient for a country to demonstrate that it operates a democratic government; the country also has to demonstrate that it respects the rule of law and confers internationally recognized freedoms and liberties upon its citizens.²⁴⁹ This commendable emphasis on liberal democracy is particularly important in Africa, where ethnic and other minorities have often “borne the brunt of the conflicts raging” across the continent.²⁵⁰ To further strengthen human rights protection and help promote a pro-growth environment, the participating countries are committed to improving the independence of the judiciary.²⁵¹ In terms of political governance, the key objectives are to foster accountability and efficiency of governments and to fight corruption.²⁵²

To assist the APRM in assessing performance in the area of democracy and political governance, participating countries are required to indicate their compliance with stipulated standards and codes approved by African countries, these include the African Charter on Human and Peoples' Rights (1990), the UN Declaration on Human Rights (1948), the Conference of Security, Stability, Development and Cooperation (CSSDCA) Solemn Declaration (2000), the United and African Union anti-corruption codes, and the NEPAD Framework Document.²⁵³ Participating countries are required to answer specific questions on each of the objectives of the democracy and governance initiative and submit evidence supporting their implementation of the agreed-upon standards.²⁵⁴ For example, with regard to fighting corruption in the political sphere, members are asked whether they have established “independent and effective institutions, mechanisms[,]

²⁴⁸ *Id.* at 19.

²⁴⁹ See DECLARATION, *supra* note 234, ¶ 7.

²⁵⁰ DECLARATION, *supra* note 234, ¶ 10. The signatories pledged their undertaking “to do more to advance the cause of human rights in Africa generally and, specifically, to end the moral shame exemplified by the plight of women, children, the disabled and ethnic minorities in conflict situations in Africa.” *Id.*

²⁵¹ *Id.* ¶ 7.

²⁵² *Indicators*, *supra* note 109, ¶ 2.2.

²⁵³ *New Partnership*, *supra* note 16.

²⁵⁴ See *Indicators*, *supra* note 109, ¶¶ 2.3-2.11.3.

and processes for combating corruption,” whether “there are precedents for dealing effectively with proven cases of corruption,” and whether “there are measures for enhancing integrity and probity in public life[.]”²⁵⁵ Examples of the kind of indicators that would be acceptable to the APRM in establishing that a member is taking active steps to combat corruption include, the requirement of periodic and publicly available asset declarations by senior public officials, and the accessibility of parliamentary proceedings and reports of parliamentary committees.²⁵⁶

B. Economic Governance and Management

The economic difficulties faced by African countries have both internal and external dimensions. The external dimensions include structural impediments to economic African economic growth such as unfavorable terms of trade.²⁵⁷ The APRM, however, focuses on what African countries can do to address the internal dimensions of the socio-economic and political problems.²⁵⁸ The internal dimensions include poor economic policies and infrastructure, unpredictable public administrations, unfriendly business environments, inefficient financial sectors, and non-transparent public financial management.²⁵⁹

African countries recognize that the “the promotion of market efficiency, control of wasteful spending, . . . and the encouragement of private financial flows are critical aspects of the quest to reduce poverty and enhance sustainable development on the continent.”²⁶⁰ Consequently, as a means of addressing the internal dimensions of their problems, participating countries of the APRM are committed to implementing “a set of concrete and time bound programmes aimed at enhancing the quality of economic and public financial management” in African

²⁵⁵ *Id.* ¶ 2.8.2.

²⁵⁶ *Id.* ¶ 2.8.3.

²⁵⁷ *New Partnership*, *supra* note 16, ¶ 34.

²⁵⁸ See MEMORANDUM OF UNDERSTANDING, *supra* note 135, ¶ 8.

²⁵⁹ COUNTRY SELF-ASSESSMENT, *supra* note 139, at 42.

²⁶⁰ *Id.* at 41.

countries.²⁶¹ The goal is to lay the foundations for macro-economic stability, transparency, and efficient economic management of African countries.²⁶²

To this end, participating countries have agreed to abide by certain internationally recognized standards and codes designed to promote good economic management.²⁶³ These include the Code of Good Practices on Transparency in Monetary and Financial Policy, the Code of Good Practices on Fiscal Transparency, Guidelines for Public Debt Management, Core Principles for Effective Banking Supervision, and the Best Practices for Budget Transparency.²⁶⁴ In addition to demonstrating compliance with relevant codes, participating countries are required to provide evidence that indicates the steps they have taken to realize the broad objectives of the economic governance and management initiative.²⁶⁵ Acceptable indicators of progress being made in this area include those illustrating the autonomy and effectiveness of the national auditing body, the autonomy of the Central Bank, the enforcement of effective competition regulation, and the drafting of medium-term economic planning instruments.²⁶⁶

C. Corporate Governance

The principal-agent problem that arises in the context of ensuring that government officials conduct the affairs of the state in the interest of the governed also arises in the corporate context. The personal interests of those who run corporations sometimes diverge with the interest of the shareholders, stakeholders, and the communities in which these corporations do business. Government regulation is typically used to address this problem. Corporate governance is usually defined in two senses. First, corporate governance is the actual behavior of corporations in terms of their performance and their treatment of shareholders and

²⁶¹ *New Partnership*, *supra* note 16, ¶ 88.

²⁶² COUNTRY SELF-ASSESSMENT, *supra* note 139, at 42.

²⁶³ DECLARATION, *supra* note 234, ¶ 18.

²⁶⁴ *Id.*

²⁶⁵ *Indicators*, *supra* note 109, ¶ 3.2.

²⁶⁶ *Id.* ¶ 3.3.3.

other stakeholders.²⁶⁷ Second, corporate governance is the body of rules and regulations under which firms operate.²⁶⁸ The APM process is concerned mainly with corporate governance in the second sense.²⁶⁹ APM corporate governance regime focuses on the process by which corporations are regulated, controlled, and held accountable.²⁷⁰ The focus is not only on formal government regulation of corporations as such, but also on non-government regulatory authorities such as stock exchanges, and professional and trade associations.²⁷¹ It also emphasizes the goal of aligning “as nearly as possible the interests of individuals, corporations, and society within a framework of sound governance and common good.”²⁷² The goal is to create a business environment in which corporations are transparent regarding their management process, accountable to their shareholders, environmentally friendly, and behave responsibly toward stakeholders, including employees, customers, and the communities in which they do business.²⁷³

In the African context, the implementation of effective corporate governance principles will provide a safeguard “against corruption and mismanagement, promoting transparency in economic life and attracting more domestic and foreign investment.”²⁷⁴ The expectation of participating countries is that improved corporate governance, together with broader implementation of economic and political reforms, will enhance the confidence of businesses and investors in the economies of African countries. It is remarkable that despite the increased international movement of capital in the global economy, foreign investment in African countries remains minimal even when compared with foreign investments in other parts of the

²⁶⁷ See Stijn Claessens, *Corporate Governance and Development* 4 (World Bank Working Paper Series, Oct. 2003), abstract available at <http://ssrn.com/abstract=642721>.

²⁶⁸ *Id.*

²⁶⁹ *Indicators*, *supra* note 109, ¶ 4.1.

²⁷⁰ COUNTRY SELF-ASSESSMENT, *supra* note 139, at 59.

²⁷¹ *See id.* at 66.

²⁷² *Indicators*, *supra* note 109, ¶ 4.1.

²⁷³ COUNTRY SELF-ASSESSMENT, *supra* note 139, at 59.

²⁷⁴ Charles Okeahalam, *Corporate Governance and Disclosure in Africa: Issues and Challenges*, 12 J. FIN. REG. & COMPLIANCE 359, 368 (2004).

developing world.²⁷⁵ While poor economic and corporate governance do not entirely explain the paucity of foreign investments in the continent, the strengthening of these areas would contribute to the process of putting African countries on the map as desirable places for investment.

It should be reiterated, however, that the corporate governance initiative of the APRM attempts to balance the profit motive of corporations with the need for corporations to be socially responsible actors in the communities in which they do business.²⁷⁶ By requiring implementation of standards on safe working conditions, fair wages, employee rights, and shareholder rights, for example, NEPAD countries can demonstrate a commitment to building business friendly economies in which corporations are responsive to the needs of the communities in which they conduct business.

To measure compliance of participating countries with the corporate governance initiative, reviewed countries are required to address a wide range of issues in their self-assessment questionnaire.²⁷⁷ These include an assessment of the clarity and coherence of the national laws on corporate behavior as well as an assessment of the role of their judiciaries in resolving commercial disputes and in prosecuting corporate infringements.²⁷⁸ Furthermore, they are required to describe how their labor laws protect the right to unionize, to outline the procedures for resolving labor disputes, and to assess the level of corporate compliance with labor and human rights laws.²⁷⁹ In terms of the protection of shareholder rights, countries under review are required to provide information on the rights and powers of shareholders, on the mechanisms for ensuring equitable treatment of all classes of shareholders, and on shareholder remedies and effectiveness thereof.²⁸⁰

²⁷⁵ Anupam Basu & Krishna Srinivasan, *Foreign Direct Investment in Africa: Some Case Studies 4* (IMF Working Paper No. 02/61, 2002), available at <http://www.imf.org/external/pubs/ft/wp/2002/wp0261.pdf>.

²⁷⁶ *Indicators*, *supra* note 109, ¶ 4.1.

²⁷⁷ COUNTRY SELF-ASSESSMENT, *supra* note 139, at 59-75.

²⁷⁸ *Id.* at 66.

²⁷⁹ *Id.* at 67.

²⁸⁰ *Id.* at 72.

D. Socio-Economic Development

It should be reiterated that the overriding objective of the NEPAD project is to promote social and economic development in Africa.²⁸¹ Socio-economic and political reforms are the strategies for accomplishing this objective.²⁸² The APRM is one of the means by which NEPAD and the AU assess the progress being made by member states in this connection.²⁸³ It necessarily follows that some of the indicators considered during peer reviews should be those that measure how well participating countries are doing in “designing appropriate policies and delivery mechanisms in key social development areas.”²⁸⁴ In assessing the progress of members in the area of socio-economic development, the APRM takes into account such issues as whether the country is fostering self-reliance and building capacity for self-sustaining development, working toward gender equality, encouraging broad-based civic participation in development by stakeholders, and providing affordable access to water, energy, and other resources to its citizens.²⁸⁵

The emphasis on self-reliance in development activities is due to the underlying goal of NEPAD to put Africans at the center of the solution to the problems facing the continent.²⁸⁶ Ultimately, the intention is to reverse the long history of excessive reliance on external assistance by emphasizing what African nations can do for themselves.²⁸⁷ Although NEPAD countries recognize the importance of foreign assistance in African economic reconstruction, the long term objective is to reduce the reliance of African countries on foreign assistance while at the same time

²⁸¹ *Id.* at 76-77

²⁸² *Id.* at 77.

²⁸³ *See New Partnership*, *supra* note 16, ¶ 1.

²⁸⁴ COUNTRY SELF-ASSESSMENT, *supra* note 139, at 76.

²⁸⁵ *Id.*

²⁸⁶ *See New Partnership*, *supra* note 16, ¶ 7 (“Africans declare that we will no longer allow ourselves to be conditioned by circumstances. We will determine our own destiny and call on the rest of the world to complement our efforts.”). NEPAD members also emphasized that the NEPAD initiative is based on African countries regaining ownership and management of their economic destiny. *See id.* ¶ 47.

²⁸⁷ *See id.* ¶ 49.

encouraging foreign investments.²⁸⁸ To this end, countries under review are required to provide information on the percentages of their national budgets that originate from external sources and also to evaluate their dependence on foreign aid in terms of their total debt ratio to gross domestic product and the total debt service ratio to exports.²⁸⁹

The focus on gender equality is born out of a realization of the state of gender relations in the continent.²⁹⁰ Female participation in public and economic life has been minimal in relation to their percentage of the continent's population.²⁹¹ Although gender equality in Africa is gradually improving, African women have historically suffered from marginalization in terms of their legal rights,²⁹² educational opportunities,²⁹³ participation in public life,²⁹⁴ and participation in economic life.²⁹⁵ This has had an adverse effect both on the material conditions of African women and also on the overall economy of the continent.²⁹⁶ To redress this situation, part of the commitment made by NEPAD countries is to work toward gender equality, in particular in providing equal access to education for both genders.²⁹⁷ To measure progress in

²⁸⁸ See Letter from Jubilee Debt Campaign to Prime Minister Tony Blair, *supra* note 50 (cautioning against excessive reliance on foreign assistance).

²⁸⁹ COUNTRY SELF-ASSESSMENT, *supra* note 139, at 81.

²⁹⁰ DECLARATION, *supra* note 234, ¶ 22.

²⁹¹ See Aili Tripp, *The New Political Activism in Africa*, 12 J. DEMOCRACY 141 (2001) (discussing the historical trends in African women's participation in politics).

²⁹² See, e.g., Adrien Wing & Eunice Carvalho, *Black South African Women: Toward Equal Rights*, 8 HARV. HUM. RTS. J. 57, 60 (1995) (discussing the historical legal discrimination against women, particularly black women, in Africa).

²⁹³ See, e.g., Alastair Matheson, *Overcoming Tribal Prejudices against Educating Girls in Kenya*, 23 J. NEGRO EDUC. 481 (1954) (discussing the disparities in educational opportunities between girls and boys in Kenya).

²⁹⁴ See Jean F. O'Barr, *Making the Invisible Visible: African Women in Politics and Policy*, AFR. STUD. REV., Dec. 1975, at 19 (discussing the roles that women play in African politics and the dismissive attitudes held by both political scientists and policymakers toward women).

²⁹⁵ See Jeffrey Meeker & Dominique Meekers, *The Precarious Socio-Economic Position of Women in Rural Africa: The Case of the Kaguru of Tanzania*, AFR. STUD. REV., Apr. 1997, at 35 (discussing the limited access of women to economic resources).

²⁹⁶ See DECLARATION, *supra* note 234, ¶¶ 10, 11.

²⁹⁷ Indicators, *supra* note 109, ¶ 5.

this regard, the APRM requires that countries supply evidence of the legal, policy, and institutional steps they have taken to promote and encourage gender equality.²⁹⁸ They are also required to provide evidence of the specific targets they have set toward gender equality in key areas of concern.²⁹⁹ Finally, they are required to provide evidence of participation of women in key economic and social areas and evidence of gender ratios across all levels of education.³⁰⁰ In its review of Ghana, the APRM noted that the country's progress on the socio-economic front was distorted by a "lack of progress in gender mainstreaming as a result of cultural and other impediments."³⁰¹ It recommended concerted efforts "at individual, local[,] and national levels to ensure that all practices of gender discrimination are tackled with greater resolution and eliminated as soon as possible."³⁰²

Active participation of stakeholders, including the private sector, civil society, and the media, is obviously necessary for the realization of the socio-economic development agenda of NEPAD. In their Framework Document, NEPAD members noted that one of the reasons for the economic underdevelopment of the continent was that "African governments did not empower their peoples to embark on development initiatives to realize their creative potentials."³⁰³ Broad-based participation of stakeholders enables the governments to obtain feedback from the people at the grassroots level, including those who are usually the most directly affected by government policies. Grassroots feedback provides insight on both the economic and social challenges facing the society and effective solutions to them. The more responsive the government is to the legitimate concerns of stakeholders, the more likely it is to enact policies that promote the common good. NEPAD members have committed themselves to encouraging effective participation of stakeholders in the development process.³⁰⁴ Also, during the APRM process, reviewed countries

298 COUNTRY SELF-ASSESSMENT, *supra* note 139, at 84-85.

299 *Id.*

300 *Id.*

301 APRM, *Country Review Report of the Republic of Ghana*, *supra* note 238, at xxi.

302 *Id.* at 140.

303 *New Partnership*, *supra* note 16, ¶ 23.

304 COUNTRY SELF-ASSESSMENT, *supra* note 139, at 5.

are required to provide evidence of legal, policy, and institutional measures that they have taken in this regard and to self-assess the effectiveness of these measures in ensuring broad-based participation.³⁰⁵

V. Obstacles and Prospects

A new development ethic is emerging in Africa. No longer satisfied with merely blaming historical and external factors for their continent's problems, African leaders are beginning to assume primary responsibility and leadership in finding solutions to these problems. NEPAD's emphasis on local responsibility for launching Africa on the path to economic and social development is not intended to minimize the external conditions that adversely affect the progress of the continent.³⁰⁶ Rather, it is aimed at bringing into sharper relief the domestic steps that the people of the continent need to take as part of a broader strategy for sustainable development.³⁰⁷

NEPAD members have been bold in acknowledging that the primary impulse for development has to come from within the continent.³⁰⁸ While they expect complementary support from foreign partners, they have put Africans at the forefront of the African renaissance. No longer will it be sufficient to bemoan the external factors that retard the progress of the continent while authoritarian African leaders run "patronage governments" that are unconcerned with the material welfare of their citizens.³⁰⁹ No

³⁰⁵ *Id.* at 86.

³⁰⁶ See *New Partnership*, *supra* note 16, ¶ 21. NEPAD acknowledged the role of colonialism in subverting traditional structures, institutions and values in Africa, and in retarding "the development of an entrepreneurial class, as well as middle class with skills and managerial capacity." *Id.*

³⁰⁷ See *id.* ¶ 49.

³⁰⁸ See, e.g., Nancy Birdstall, Dani Rodrik & Arvind Subramanian, *How to Help Poor Countries*, FOREIGN AFF., July-Aug. 2005, at 136 (discussing an increasing realization that the rate of development in poor countries is often determined by the policies of these countries, and that outsider can only play a limited role).

³⁰⁹ Francis M. Deng, *African Policy Agenda: A Framework for Global Partnership*, in *AFRICAN RECKONING: A QUEST FOR GOOD GOVERNANCE* 153 (Francis M. Deng & Terrence Lyons, eds., 1998) (contrasting "patronage governments" in Africa with "policy governments" in Europe, and noting that in patronage governments there is usually "a strong pressure on elected politicians to become benefactors to their kin-group or ethnic constituencies.").

longer will it be acceptable for African leaders to hold out their hands for foreign assistance while they exhibit reluctance to take the steps necessary for creating functional and working societies.

There are those who express the fear that the policies embodied in the NEPAD initiative and the peer review process may gradually become conditions for receiving official development assistance from the West.³¹⁰ Such aid has proven to be a crucial part of the war against poverty in many African nations.³¹¹ It is likely that foreign donors will gradually begin to condition foreign assistance to the recipient African countries committing themselves to implementing governance reforms and participating in the peer monitoring of their progress. Implicit in the partnership NEPAD members forged with the international community was the expectation that if Africa implemented policies promoting transparency, democracy, and good governance, a greater amount of foreign aid will flow into the continent.³¹²

It is not surprising that foreign donors have expectations about how the funds they provide will be used and about the quality of governance in the countries they support financially. After all, foreign donors give aid to African countries in an effort to alleviate the economic and social deprivations in the continent, not to support kleptocracies that scarcely care about the welfare of their people.³¹³ Moreover, foreign assistance is usually effective in cases where the recipient countries “do the right things to help themselves and have the capacity and the leadership to spend the money wisely.”³¹⁴ Without donor countries insisting on domestic reforms to improve the ability of recipient countries to manage assistance prudently, large infusions of foreign funds will not

³¹⁰ Deme, *supra* note 105, at 31.

³¹¹ See KEVIN WATKINS, ET. AL., UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2005 7 (2005), available at http://hdr.undp.org/reports/global/2005/pdf/HDR05_overview.pdf [hereinafter UNDP REPORT].

³¹² *New Partnership*, *supra* note 16, ¶ 66.

³¹³ See Stephen Ellis, *How to Rebuild Africa*, FOREIGN AFF., Sept.-Oct. 2005, at 135 (arguing that more than more money, Africa needs accountable governments that are responsive to the needs of their citizens).

³¹⁴ Birdstall, Rodrik & Subramanian, *supra* note 308, at 142.

materially improve the conditions in recipient countries.³¹⁵ In return for receiving foreign assistance, the recipient countries have "a responsibility to create an environment in which aid can yield optimal results."³¹⁶ Aid conditions have been useful in persuading recipient countries to create such an environment.³¹⁷

For this reason, foreign donors have a legitimate justification for conditioning their assistance on the implementation by recipient African countries of those policies and programs that their peers in the continent have acknowledged as preconditions for economic and social revitalization. What is problematic is the conditioning of assistance on the implementation of policies or programs devised by outsiders without taking into account the peculiarities of the continent.³¹⁸ One of the valid criticisms leveled against the structural adjustment programs of the IMF and the World Bank, the implementation of which were often preconditions for the grant of IMF loans in the 1980s, was that the programs were devised by outsiders who were ignorant of and seemingly indifferent to the social costs of the economic policies force-fed to African countries.³¹⁹ In contrast, the NEPAD blueprint for development of the continent is an indigenous project devised by Africans which can be modified as needed to adapt to

³¹⁵ *Id.* at 143.

³¹⁶ UNDP REPORT, *supra* note 311, at 7.

³¹⁷ See generally Benjamin Pequenino, *Is Aid Conditionality a Force for Good Governance? The Case of Mozambique* (Aug. 2002) (unpublished University of Birmingham Masters of Science dissertation on file with the North Carolina Journal of International Law and Commercial Regulation).

³¹⁸ UNDP REPORT, *supra* note 311, at 7. The United Nations Development Programme cautioned against excessive use of conditionalities by international financial organizations. *Id.* However, the UNDP was concerned about the macroeconomic conditionalities imposed on recipient countries by international financial institutions, not the tying of aid to the implementation of domestic commitments agreed among developing nations. See *id.*

³¹⁹ See OBIOMA IHEDURU, *CONTENDING ISSUES IN AFRICAN DEVELOPMENT: ADVANCES, CHALLENGES AND THE FUTURE* 169 (2001) (arguing that the structural adjustment programs had negative effects on the national economies of those African countries that implemented them); see also Sayre Schatz, *Structural Adjustment in Africa: A Failing Grade So Far*, 32 J. OF MOD. AFR. STUD. 679 (1994) (refuting the assertion that the World Bank's macro-economic policies have assisted in Africa's economic development).

Africa's changing environment.³²⁰ Furthermore, the APRM mechanism is overseen by African politicians and technical experts, not foreigners.³²¹ This system is all the more appropriate at a time when foreign donors are increasingly moving away from the tendency of trying to micromanage the affairs of recipient countries.³²²

The willingness of African countries to abide by their NEPAD commitments and compel compliance by recalcitrant members is a more pressing concern under the new partnership than aid conditionalities. Since NEPAD is based on local ownership, it is important that member states have the will and the ability to persuade members to comply with its core objectives. The APRM does, however, afford African countries a formal mechanism for monitoring the progress of sister countries and for exerting peer pressure to encourage reform.³²³

The recent record of African countries in influencing political developments in sister countries has been mixed. Most notably in the African community's commitment to fostering democracy the continent was reinforced by its refusal to endorse the unconstitutional attempt to install the son of the late President Gnassingbe Eyadema of Togo as President upon his father's death.³²⁴ However, the AU's response to the deterioration of political governance in Zimbabwe has been less than reassuring,³²⁵ and African leaders have often shown "little inclination to castigate but greater tendency to empathize" with their repressive colleagues.³²⁶

³²⁰ *New Partnership*, *supra* note 16, ¶ 1.

³²¹ *Peer Review*, *supra* note 22, ¶ 1, 6.

³²² *Africa Acknowledges It Must Help Itself*, THE ECONOMIST, July 7, 2005, at 46. NEPAD's emphasis on African ownership of solutions to the continent's problems "matches the latest trend in the development world, whereby donor countries and multilateral organizations devolve as much responsibility as possible for anti-poverty and health programmes to the recipient countries themselves, rather than micro-mange them as in the past." *Id.*

³²³ *Peer Review*, *supra* note 22, ¶ 3.

³²⁴ *Africa Acknowledges It Must Help Itself*, *supra* note 322. The AU insisted on a formal election, which Eyadema's son won, although its fairness was disputed. *See id.*

³²⁵ *See id.*

³²⁶ John Akokpari, *Policing and Preventing Human Rights Abuses in Africa: the OAU, the AU and the NEPAD Peer Review*, 32 INT'L J. LEGAL INFO. 461, 469 (2004).

Whatever the benefits of peer pressure, there are limits to what it can accomplish, especially when the pressure is unsupported by an alternative mechanism for compelling change. According to the Base Document of the APRM, “[i]f dialogue proves unavailing, the participating Heads of State and Government may wish to put the Government on notice of their collective intention to proceed with appropriate measures by a given date.”³²⁷ Such measures are to be used as “a last resort.”³²⁸ Oddly, the document does not state what these “appropriate measures” might be. Since membership of the APRM process is voluntary, expulsion from the body is unlikely to be one of the intended sanctions.³²⁹ What appears to be one of the more persuasive ways of concentrating the attention of the recalcitrant state on the need to implement recommended changes is the conditioning of certain external assistance on compliance. It is for this reason, among others, that the concerns about linking participation in the APRM and the receipt of foreign aid are somewhat exaggerated.

Although conditioning foreign assistance on good faith efforts of compliance with APRM recommendations would provide a necessary incentive for participating countries to improve their governance, it is important that foreign assistance should not be denied in areas where denial would have direct adverse effects on the already deprived population of the recalcitrant country. Instead, a strategy of carefully targeted withdrawal of assistance, together with an international campaign against the recalcitrant country, has the greater likelihood of success without negatively affecting the short-term material conditions of the people.

Another concern about the APRM relates to its breadth of coverage. This concern has two prongs: (1) whether the scope is so broad as to dilute the competence and effectiveness of the reviews,³³⁰ and (2) whether the inclusion of political governance in the APRM scheme will politicize the process, thereby making it

³²⁷ See *Peer Review*, *supra* note 22, ¶ 24.

³²⁸ *Id.*

³²⁹ *Id.* ¶ 1.

³³⁰ See Ravi Kanbur, *The African Peer Review Mechanism (APRM): An Assessment of Concept and Design* 1 (Cornell U., Dep't Applied Econ. & Mgmt., 2004), <http://www.arts.cornell.edu/poverty/kanbur/APRM.pdf> (arguing that the APRM should narrow down the scope of its reviews and not overextend itself).

less attractive to those nations wary of external intrusions into their political affairs.³³¹ With regard to the first prong, the broad scope of the APRM requires a considerable investment of technical and financial resources.³³² In terms of technical resources, at least, NEPAD and the AU have dealt with this obstacle by taking the commendable step of spreading out the responsibility for conducting particular aspects of the APRM reviews.³³³ For example, the ECA assists in economic governance reviews, while the ADB will spearhead reviews of the banking sector.³³⁴ These organizations contribute both expertise and credibility in their respective areas of concentration and their inclusion in the APRM process will mitigate the assessment burden on APR country review teams. Their participation will also strengthen confidence in the technical competence of the reviewers. To be sure, the breadth of APRM reviews increases the financial burden of the process, but the added expense is warranted in light of the centrality of each review area to the revival of the continent. Participating African countries recognize the importance of such a broad mandate and largely support its implementation. This is demonstrated by the support pledged by African nations³³⁵ and the international community.³³⁶

With regard to the second prong, whether the inclusion of

³³¹ See Cilliers, *supra* note 170, at 1 (describing the controversy about whether the APRM should include "political review").

³³² Deme, *supra* note 105, at 22.

³³³ *Supra* note 141 and accompanying text.

³³⁴ Cilliers, *supra* note 170, at 5.

³³⁵ It remains to be seen whether African countries will uphold their financial commitment to the APRM. With some of them already in arrears in their AU dues, they may compromise the viability of the APRM by depriving it of much needed funds. See Dorina Bekoe, *Creating a Reliable African Peer Review Mechanism*, 14 CHIMERA 2, 6 (2003), available at http://www.ciaonet.org/olj/uaic/uaic_winter2003/uaic_winter03_02.pdf.

³³⁶ Deme, *supra* note 105, at 22. Donor countries that have pledged financial support include Canada, Norway, Sweden and the United Kingdom. *Id.* African finance ministers suggested that the APRM should be fully funded by African countries "to ensure ownership by the continent and reduce perception of foreign influence." See Cilliers, *supra* note 170, at 4. While full funding of the APRM by African countries is desirable, foreign financial support does not necessarily undermine the independence of the review process, which is conducted by African professionals and overseen by African institutions. *Id.*

political governance would compromise the success of the APRM, it is important to consider what the utility of a peer review mechanism would be if it excluded the perennial problems of authoritarianism, maladministration, and lack of accountability that have long plagued the continent. To be sure, good economic and corporate governance are crucial in building an environment conducive to sustainable economic growth. However, without good political governance, effective economic and corporate governance are unlikely to materialize in Africa.³³⁷ Recognizing this, the ECA initiated an African Governance Report to monitor the state of governance in the continent, as reflected in the areas of political, social, and economic affairs.³³⁸ These three areas were included in the report because of "the emerging consensus that good governance is central to Africa's development agenda and progress."³³⁹ A peer review mechanism that excludes political governance is unlikely to have a significant impact on the continent.³⁴⁰

Lack of data is another obstacle confronting the APRM, especially in terms of assessing the impact of economic and social policies on the lives of the African people.³⁴¹ Poor record-keeping is prevalent across the continent,³⁴² and there is frequently a disparity between recorded facts and realities. With time,

³³⁷ World Bank, *supra* note 6, at 50 (arguing that political and economic governance are intertwined and together influence sustainable development); see also Anne Lennan & Wendy Ngoma, *Quality Governance for Sustainable Development*, 4 PROGRESS DEV. STUD. 279, 279 (2004) (explaining how sustainable development is dependent on the support given to public institutions and public infrastructure).

³³⁸ ECONOMIC COMMISSION FOR AFRICA, *supra* note 18, at 17-20.

³³⁹ *Id.* at 9. In its governance survey, the ECA posed questions about the effectiveness of the three branches of government, the protection of human rights, the institutional mechanisms for political representation, and the effectiveness of civil society organizations. *Id.* at 10.

³⁴⁰ See Jakkie Cilliers, *Peace and Security through Good Governance: A Guide to the NEPAD African Review Mechanism* (Institute for Security Studies, Issue Paper, Apr. 2003), at 2, available at <http://www.iss.org.za/Pubs/Papers/70/Paper70.pdf>.

³⁴¹ Stremlau, *supra* note 151.

³⁴² See Abraham Okolo, *The Nigerian Census: Problems and Prospects* 53 AM. STATISTICIAN 321 (1999). Nigeria, for example, does not have accurate or reliable population count. Not only does this make economic planning difficult, but also it would also make it difficult for the APRM to evaluate the effectiveness of current economic policies. *Id.*

participating countries may improve their record-keeping, enabling them to adequately answer the questions contained in the APRM questionnaire.³⁴³ However, in the short term, the lack of reliable data compounds the difficulty of conducting effective peer reviews.³⁴⁴

The credibility and independence of the review panels are also essential to the effectiveness of the APRM.³⁴⁵ As membership in the APRM is voluntary, it is crucial that countries have confidence in the independence and credibility of the review process.³⁴⁶ The legitimacy of the process is eroded if the review bodies are viewed as being under the control of particular organizations or entities, and the likelihood of the process improving governance in Africa would be greatly reduced. Recognizing the importance of legitimacy and transparency, the APR Panel, which has oversight over the conduct of the review process, is made up of eminent Africans who have distinguished themselves in areas within the scope of the mission of the APRM.³⁴⁷ Equally important is the fact that the membership of the panel is supposed to reflect a broad regional balance.³⁴⁸

Unlike OECD reviews that are conducted by a permanent staff, APRM country reviews are done by ad hoc teams.³⁴⁹ APR Teams, which conduct country reviews, are “constituted only for the period of the country review visit.”³⁵⁰ Although this structure allows greater flexibility, it does impose two significant obstacles: (1) ensuring the technical competence of each team, and (2) making sure that there is consistency in the standards applied. Crucially, the APRM regulations require that review teams “be carefully designed to enable an integrated, balanced, technically

³⁴³ See COUNTRY SELF-ASSESSMENT, *supra* note 139.

³⁴⁴ Stremlau, *supra* note 151.

³⁴⁵ See Botchwey, *supra* note 12, at 13.

³⁴⁶ *Peer Review*, *supra* note 22, ¶ 1.

³⁴⁷ *Id.* ¶ 7. The present panel, for example, includes Professor Adebayo Adedeji, the former Executive Secretary of the UN Economic Commission for Africa (1975-1991) and Chris Stals, the former president of the South African Reserve Bank (1991-1998). *Id.*

³⁴⁸ *Id.*

³⁴⁹ Organisation and Processes, *supra* note 162, ¶ 5.1.

³⁵⁰ *Id.*

competent, and professional assessment of the reviewed country.”³⁵¹ Furthermore, the fact that the membership of review teams must receive approval and that their work is overseen by the APR panel³⁵² should help ensure the technical competence of the review teams³⁵³ and foster consistency in their operations.³⁵⁴

Civil society is vital to the success of the APRM.³⁵⁵ Without the involvement of a vibrant civil society to hold the government accountable for the implementation of APRM recommendations, this would have to be primarily based on peer pressure and the withdrawal of aid. While strategies such as peer pressure and withdrawing aid are useful, such strategies need to be supported by broad grassroots action for reform. With its ability to bring domestic pressure and adverse publicity to bear on governments, civil society has an important role to play in fostering government accountability.³⁵⁶ Civil society organizations, as a result of grassroot efforts will, be able to generate local attention and action regarding the work of the APRM and the actions necessary to realize the goals of the APRM process within their countries. Moreover, if the APRM’s objective of encouraging African

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ It should be noted that the effectiveness of review teams will be affected by the quality of research support they receive from the APR Secretariat. The staff strength of the research department of the Secretariat would be crucial in this regard.

³⁵⁴ *Peer Review*, *supra* note 22, ¶ 8. APR Panel members serve for about four years, a tenure that should provide some stability and continuity in the operations of the APRM. *Id.*

³⁵⁵ Larry Diamond has defined civil society as:

. . . the realm of organized social life that is voluntary, self generating, self supporting, autonomy from the state, and bound by the legal order or set of shared rules . . . it involves citizens acting collectively in a public sphere to express their interests, passions, and ideas, exchange ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable. It is an intermediary entity, standing between the private sphere and the state.

Larry Diamond, *Rethinking Civil Society: Toward Democratic Consolidation* 5:3 J. DEMOCRACY 4, 6 (1994). Ousmane has noted that “[c]ivil society is in a position to make the endogenous and popular contribution that is missing from the APRM project.” Deme, *supra* note 105, at 30.

³⁵⁶ See CAN AFRICA CLAIM THE 21ST CENTURY, *supra* note 5, at 71 (arguing that an active civil society is essential in holding governments accountable).

ownership of the solutions to the continent's problems is to be realized, active involvement of the general population and civic organizations in the journey toward economic and social development is essential.³⁵⁷

Although civil society has played an important role in campaigns for the democratization of the continent,³⁵⁸ authoritarian African states have been masters at suppressing institutions of civil society.³⁵⁹ Years of authoritarian governments in the continent have whittled down the civic space for dialogue and contestation of issues. Owing to the gradual democratization of the continent, this civic space has increased in recent years.³⁶⁰ Nonetheless, if civil society is to play an active role in the APRM, it is important that it be formally integrated into the APRM's institutional processes and that participating countries take seriously their commitment to promoting the "full participation of relevant stakeholders."³⁶¹

Civil society's participation will be vital at different levels of the APRM process, including involvement in the institutions that oversee the APRM process in the reviewed state, the drafting of the reviewed state's Programme of Action,³⁶² the review of draft APRM reports, and the monitoring and evaluation of the reforms recommended by the APRM.³⁶³

In terms of participation in the institutions overseeing the APRM process in the reviewed country, the APR Forum has requested that each participating country set up "broad-based and all-inclusive" National Coordinating Structures.³⁶⁴ These

³⁵⁷ Deng, *supra* note 309, at 140.

³⁵⁸ John Makumbe, *Is there a Civil Society in Africa?*, 71 INT'L AFF. 305, 307 (1998).

³⁵⁹ IHEDURU, *supra* note 319, at 173.

³⁶⁰ See, e.g., Adam Habib, *State-Civil Society Relations in Post-Apartheid South Africa*, 72 SOCIAL RESEARCH 671 (2005) (discussing the effect of democratization on the state of civil society in South Africa).

³⁶¹ GUIDELINES, *supra* note 193, ¶ 48.

³⁶² See *supra* note 149 and accompanying text.

³⁶³ See Organisation and Processes, *supra* note 162, ¶ 7.19.

³⁶⁴ Communiqué Issued at the End of the First Summit of the Committee of the Participating Heads of State and Government in the African Peer Review Mechanism, Kigali, Rwanda, Feb. 13, 2004, available at <http://www.iss.co.za/AF/RegOrg/nepad/aprmcomfeb04.pdf>.

structures, which are to include civil society stakeholders and private sector participants, are designed to facilitate broad involvement by non-government bodies in the APRM operations.³⁶⁵ This broadening of participation is consistent with the APR MOU,³⁶⁶ in which the member countries committed themselves to ensuring “the participation of all stakeholders in the development of the national Programme of Action, including trade unions, women, youth, civil society, private sector, rural communities, and professional associations.”³⁶⁷ Involvement of stakeholders is also required in the preparation of answers to the self-assessment questionnaires that the APRM sends to countries under review.³⁶⁸ It is instructive to note that participating countries are taking commendable steps to involve civil society organizations in the APRM process. For example, in preparing for their country reviews, Ghana³⁶⁹ and Rwanda included civil society organizations. Concerns, however, were expressed about the range of organizations invited and the depth of their involvement in the process.³⁷⁰

With regard to the involvement of civil society in the APRM institutional process, it is useful to summarize the relevant process. Under the APRM regime, draft reports of APR Teams are reviewed by the APR Panel and approved by the APR Forum.³⁷¹ During the review stage, there is opportunity for the government of the reviewed country to comment on the draft report and to share its views on the shortcomings identified.³⁷² It is certainly useful to give the reviewed country an opportunity to address the

³⁶⁵ See *id.*

³⁶⁶ MEMORANDUM OF UNDERSTANDING, *supra* note 135, ¶ 22.

³⁶⁷ *Id.*

³⁶⁸ See COUNTRY SELF-ASSESSMENT, *supra* note 139, ¶ 2.1.

³⁶⁹ See Deme, *supra* note 105, at 30 (on the use of seminars and workshops to raise public awareness about the APRM Ghana review, and to obtain participation of stakeholder in the process).

³⁷⁰ ECONOMIC COMMISSION FOR AFRICA, COMMITTEE ON HUMAN DEVELOPMENT AND CIVIL SOCIETY, STRATEGIES FOR PROMOTING EFFECTIVE STAKEHOLDER PARTICIPATION IN THE AFRICAN PEER REVIEW MECHANISM 9-11 (2005), available at http://www.uneca.org/chdcs/chdcs3/strategies_for_promoting_aprm_chdcs3.pdf.

³⁷¹ Organisation and Processes, *supra* note 162, ¶ 7.14, 7.15.

³⁷² See *supra* note 153 and accompanying text.

findings of the team before its formal adoption by the APR Forum. But, it is also important that stakeholders have the opportunity to review the draft to ensure that it incorporates the feedback and suggestions they made during the country visit. To be sure, the involvement of a large group of civil society organizations during this stage of the review process might affect the efficiency of the process. However, the inclusion of at least a representative of civil society organizations in the membership of the APR Panel would go a long way towards ensuring that the interests of these groups are taken into account in the stages before the formal adoption of team reports.

Effective monitoring of compliance with the APRM recommendations will depend, in part, on how widely APRM reports and recommendations are disseminated within the continent and how actively civil society organizations are involved in the strategy to encourage voluntary compliance. Review reports are required to be made public after their adoption by the APR Forum.³⁷³ They are also tabled in regional bodies with the aim of affording these bodies the opportunity to discuss the findings and to monitor the responsiveness of the reviewed state to the implementation of suggested reforms.³⁷⁴ For example, the African Commission on Human and Peoples' Rights is well suited to monitor the steps being taken by the reviewed country in implementing the recommendations of the APRM in the area of human rights.³⁷⁵

In addition to the formal involvement of regional bodies in the post-adoption monitoring, the APRM should also engage civil society in the monitoring of compliance. The media, as societal watchdogs, should ensure the penetration of the review report to the grassroots.³⁷⁶ Workshops and seminars will also be useful in

³⁷³ Organisation and Processes, *supra* note 162, ¶¶ 7.16, 7.17.

³⁷⁴ *Id.* ¶ 7.17. These bodies include the Summit of African Union, the Pan-African Parliament, the African Commission on Human and Peoples' Rights, the Peace and Security Council and the Economic, Social and Cultural Council of the African Union. *Id.*

³⁷⁵ See RACHEL MURRAY, HUMAN RIGHTS IN AFRICA FROM THE OAU TO THE AFRICAN UNION 51 (2004). Part of the function of the Commission is to receive reports from African countries on the legislative and other measures they have taken to promote human rights. *Id.*

³⁷⁶ See ECONOMIC COMMISSION FOR AFRICA, *supra* note 18, at 20 (discussing the

obtaining feedback from civil society organizations and other stakeholders on the progress being made by the reviewed country in complying with APRM recommendations.³⁷⁷

It is noteworthy that African civil society organizations are taking the initiative to position themselves as active participants in the governance review process. For example, the African Human Security Initiative, a network of African non-governmental organizations, is dedicated to measuring the performance of key African states in promoting human security, one of the areas covered by the APRM.³⁷⁸ The initiative, aimed at fostering the objectives of NEPAD and the APRM,³⁷⁹ conducts case studies and reviews of the state of human security in the continent.³⁸⁰ In a similar vein, the Addis Ababa Declaration, made by a collection of African civil society organizations, calls on these organizations to “plan strategies to strengthen [their] participation in the APRM” and to “strengthen cooperation with governments and the private sector in order to identify problems [and] solutions respecting national, regional[,] and pan-African interests.”³⁸¹ These kinds of civil society projects would be useful in focusing public attention on the APRM agenda and in concentrating the attention of participating countries on governance reform issues.

difficulty of building a vibrant media in the continent). The APRM Secretariat has noted that “the press has a critical role in supporting the APRM process and disseminating accurate information to the general public.” See Press Release from the APRM Secretariat, July 2005, available at <http://www.nepad.org/2005/files/newsletterarchive.php>.

³⁷⁷ See *Organisation and Processes*, *supra* note 162, ¶ 7.19. The APRM Secretariat is required to organize workshops on the “issues identified in the review report.” *Id.*

³⁷⁸ Fatouatta M'boge & Sam Doe, *African Commitments to Civil Society Engagement: A review of eight NEPAD countries 1* (AHSI, Occasional Paper, Aug. 2004), available at <http://www.africanreview.org/docs/papers/civsoc.pdf>.

³⁷⁹ *Id.*

³⁸⁰ *Id.* The AHSI has so far chosen eight countries for review. *Id.*

³⁸¹ Addis Ababa Declaration on the Role of the African Civil Society with Regard to the African Peer Review Mechanism, Jan. 18, 2006, <http://www.afrodad.org/index.php> (follow Issue tab, then follow article tab, select Addis Ababba APRM Declaration hyperlink). The declaration was made by representatives of African civil society organization during a workshop facilitated by the Economic Commission for Africa, the Partnership Africa Canada, and the Christian Relief and Development Association. *Id.*

VI. Conclusion

The APRM constitutes a reaffirmation by African countries of their commitment to practices that have been conventionally understood as preconditions for economic and social development.³⁸² By committing themselves to the enactment of practices that promote good governance and to the implementation of sound macroeconomic policies, APRM countries seek to reverse the continent's history of developmental malaise and economic stagnation.³⁸³

These commitments, and their reinforcement by peer mentoring, reflect a realization that Africans have to provide the primary impulse for the development of their continent. Although external conditions such as unfair trade rules and structural inequalities adversely affect material conditions on the continent,³⁸⁴ the new breed of African leaders believe that the solution to the myriad problems facing the continent has to begin with a fundamental reform of political and social policies in the continent.³⁸⁵

Primarily, African ownership of the solutions to the problems of the continent is important for several reasons. First, it is a welcome change from a labored emphasis on the external factors that contribute to the stagnation of the continent. The overemphasis of external factors has tended to draw attention away from the role decades of poor governance and poor policies have played in inhibiting the development of the continent. Frequently, autocratic administrations in Africa have committed human rights abuses, looted public funds, and enacted misguided economic policies, while all the time pointing fingers of blame at external conditions. Refocusing attention on internal conditions should not, however, foreclose paying appropriate attention to the external factors that not only contribute to the internal

³⁸² *New Partnership*, *supra* note 16, ¶ 79. In explaining their commitment to the democracy and political governance initiative, NEPAD members noted that "it is generally acknowledged that development is impossible in the absence of true democracy, respect for human rights, peace and good governance." *Id.*

³⁸³ *Peer Review*, *supra* note 22, ¶ 3.

³⁸⁴ See UNDP REPORT, *supra* note 311, at 9-11 ("[The] world's highest trade barriers are erected against some of its poorest countries").

³⁸⁵ See *New Partnership*, *supra* note 16, ¶ 49.

conditions,³⁸⁶ but that are also often independent factors in the stagnation of the continent.³⁸⁷

Second, by emphasizing the primacy of indigenous solutions to the problems of the continent, the APRM provides African countries an opportunity to collaborate in developing working solutions.³⁸⁸ Many of these countries share similar histories of colonization, multiculturalism, and difficulties in engaging with the global economy.³⁸⁹ By working together, they can exchange ideas about the policies and strategies that are appropriate in light of the realities of the history, geography, and politics of the continent.

Finally, if Africa owns the solution to the problems of the continent and the blueprint for progress is drafted by Africans themselves, it becomes more difficult for some African countries to refuse to enact the suggested reforms on the ostensible grounds that they are imposed by foreign industrial powers. The elimination of the argument of external imposition of policies on Africans means that the policies and practices have to be evaluated based on their merits, untainted by an association with external powers in a continent that remains sensitive about its history of colonization.

The NEPAD blueprint is a sound one. It contains a broad-based strategy for promoting best practices and policies in the areas of political, economic, and corporate governance and socio-economic development. The political governance aspects of the initiative are well-suited to fostering liberal democracies that respect human rights, the rule of law, the independence of the

³⁸⁶ An example relates to the issue of corruption. African leaders who have bled their countries dry often stash away their loot in Western financial capitals. It is certainly odd that Western leaders who rightly condemn corruption in the developing world have not always aggressively enforced their domestic laws to prevent their countries from remaining repositories for funds stolen from the developing world. See *Political Corruption and Economic Migration*, Comment AFRICAN WEEK, available at http://www.africaweekmagazine.com/news/comment.php?pageNum_r_comm=28&totalRows_r_comm=29.

³⁸⁷ See UNDP REPORT, *supra* note 311, at 9-11

³⁸⁸ See Organisation and Processes, *supra* note 162, ¶ 7.19. The APRM stresses the need for "networking and sharing of experience and best practices among participating countries." *Id*

³⁸⁹ *New Partnership*, *supra* note 16, ¶¶ 19-26.

judiciary, and constitutionalism. If effectively implemented, the economic governance initiative will promote the implementation of sound economic policies that would stimulate macro-economic stability, transparency, and economic progress. The corporate governance initiative should ensure that corporate regulations foster economically efficient and socially responsible corporate enterprises. The socio-economic initiative is essential for assessing the progress being made by participating states in improving the well being and standard of living of their citizens.

In Africa, the gap between rhetoric and reality has long been too wide. NEPAD is the latest in a procession of economic and social blueprints for the revival of Africa.³⁹⁰ Designed to promote stability, economic growth, and sustainable development of the continent, NEPAD may well suffer the fate of poor implementation that befell earlier projects. Without an adequate implementation strategy and an effective mechanism for persuading African nations to enact the good governance and sound macroeconomic policies it canvasses, NEPAD's likelihood of success is remote.

It is against this background that the APRM should be celebrated as a bold innovation that reinforces the NEPAD commitments by providing the mechanism for monitoring the implementation of agreed-upon policies and practices and by providing a forum for participating countries to exchange ideas and experience about best practices. Moving away from historical reluctance to interfere in the internal affairs of member states, African states are now realizing the role of "objective and constructive criticism that is bound to affect state practice in various areas [in] accord with international best practices elsewhere."³⁹¹

To be effective in promoting good governance in the continent, participation in the APRM needs to be broadened and the participating countries have to demonstrate genuine commitment to the values of the process.³⁹² They should do this by adequately

³⁹⁰ See DECLARATION, *supra* note 234, ¶ 3.

³⁹¹ Vincent Nmehielle, *The African Peer Review Mechanism under the African Union and its Initiative: The New Partnership for Africa's Development*, 98 AM. SOC'Y INT'L L. PROC. 240, 246 (2004).

³⁹² So far only 23 countries have acceded to the APRM. See *id.*

funding the institution, ensuring the credibility and integrity of the review process, and voluntarily implementing the recommendations made by the APRM. Premised on the idea of peer learning without a coercive enforcement process, the APRM relies on the voluntary compliance of participating countries buttressed by grassroots mobilization efforts by civil society organizations.

Crucially, the APRM has recognized the importance of civil society organizations both in the conduct of peer reviews and in the implementation of review reports.³⁹³ The active involvement of these organizations would help restore the confidence of those who view NEPAD as an initiative whose "formulation was not informed by debates and consultations in Africa."³⁹⁴ It will also reinforce the democratic agenda of NEPAD by involving the populace in the review of the performance of their governments.

The APRM is part of a commendable attempt to respond to the resurgent demand for African countries to implement sound political and economic practices. Whether the APRM succeeds in realizing its laudable objective of promoting good governance in Africa will finally depend on the participants' level of commitment and on the pressure that is brought to bear on them to abide by their promise of reform. To the extent that the APRM contributes to the creation of an environment conducive to the emergence of good governance in Africa, it will have played an important role in changing Africa for the better.

³⁹³ Organisation and Processes, *supra* note 162, ¶¶ 7.8, 7.9, 7.19.

³⁹⁴ Akokpari, *supra* note 326, at 471.